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APPENDIX

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 72-1076

WILLIAM C. HOUGHTON, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petition for Certiorari Filed February 5, 1973
Certiorari Granted April 16, 1973

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 72-1076

WILLIAM C. HUDDLESTON, *Petitioner*,

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On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

July 24, 1972.	Indictment filed.
August 7, 1972.	Appointment of Counsel.
August 30, 1972.	Defendant's Motion to Dismiss and Brief filed.
September 6, 1972.	Statements of Government Witnesses filed in Camera.
September 8, 1972.	Government's Trial Memorandum filed.
September 8, 1972.	Government's Opposition to Motion to Dismiss filed.
September 8, 1972.	Defendant's Supplemental Brief in Support of Motion to Dismiss filed.
September 12, 1972.	Defendant's Motion to Dismiss Denied.
September 12, 1972.	Defendant Pleads Not Guilty; Moves to Suppress Evidence, and Waives Jury Trial.
September 13, 1972.	Defendant's Motion to Suppress Denied.
September 13, 1972.	Court Trial.
September 13, 1972.	Defendant Found Guilty and Sentenced.
September 14, 1972.	Notice of Appeal filed.
September 21, 1972.	Third Party Surety Bail of $1,500 Posted.
November 8, 1972.	Appeal Brief of Appellant filed.
November 30, 1972.	Appeal Brief of Appellee filed.
January 8, 1973.	Judgment of Affirmance Entered.
January 8, 1973.	Opinion of Court of Appeals filed.
January 8, 1973.	Concurring and Dissenting Opinion of Judge Chambers filed.
February 5, 1973.	Petition for Writ of Certiorari of Defendant filed.
February 7, 1973.	Order Staying Issuance of Mandate filed.
March ..., 1973.	Brief for the United States in Opposition to Petition for Writ of Certiorari filed.
April 16, 1973.	Petition for a Writ of Certiorari Granted.

United States District Court

For The

Central District of California

March 1972

United States of America, *Plaintiff,*	*Grand Jury* *NO. 1076CD* *INDICTMENT* *[18 U.S.C. §922(a)(6); Illegal Acquisition of Firearm]*
v.	
William Carroll Huddleston, *Defendant.*	

The Grand Jury charges:

COUNT ONE

[18 U.S.C. §922(a)(6)]

On or about February 11, 1972, in the Central District of California, defendant WILLIAM CARROLL HUDDLESTON, in connection with the acquisition of a firearm from a licensed dealer in firearms, wilfully and knowingly made a false and fictitious statement, likely to deceive such dealer with respect to a material fact as to the lawfulness of the sale of such firearm pursuant to Chapter 44, Title 18, United States Code, in that he answered "no" to question 8b of Form 4473 which asked the question, "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?", knowing that he had been convicted of a felony, in violation of Sections 922(a)(6) and 924(a), Title 18, United States Code.

COUNT TWO

[18 U.S.C. §922(a)(6)]

On or about March 10, 1972, in the Central District of California, defendant WILLIAM CARROLL HUDDLESTON, in connection with the acquisition of a firearm from a licensed dealer in firearms, wilfully and knowingly made

a false and fictitious statement, likely to deceive such dealer with respect to a material fact as to the lawfulness of the sale of such firearm pursuant to Chapter 44, Title 18, United States Code, in that he answered "no" to question 8b of Form 4473, which asked the question, "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?", knowing that he had been convicted of a felony, in violation of Section 922(a)(6) and 924(a), Title 18, United States Code.

COUNT THREE
[18 U.S.C. §922(a)(6)]

On or about March 10, 1972, in the Central District of California, defendant WILLIAM CARROLL HUTTON, in connection with the acquisition of a firearm from a licensed dealer in firearms, wilfully and knowingly made a false and fictitious statement, likely to deceive such dealer with respect to a material fact as to the lawfulness of the sale of such firearm pursuant to Chapter 44, Title 18, United States Code, in that he answered "no" to question 8b of Form 4473, which asked the question, "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?, knowing that he had been convicted of a felony, in violation of Section 922(a)(6) and 924(a), Title 18, United States Code.

A TRUE BILL

_____
Foreman

WILLIAM D. KEITH
WILLIAM D. KEITH
United States Attorney

I hereby attest and certify on October 12, 1972, that the foregoing document is a xxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

By E. RALPH

CRIMINAL MINUTES — GENERAL

Case No. 10760-Crim. Date 9/12/72

DOCKET ENTRY:

Ord deft's mot to dismiss denied. Deft pleads not guilty Cnts 1, 2, 3. Deft moves to suppress evid. Ord matter cont'd to 9/13/72, 1:30 P.M. for hrg mot to suppress & for Ct trial. Fld waiver of jury trial (R)

PRESENT: HON. MANUEL L. REAL, JUDGE

Tamara Saunders	*Florence Garcia*	*Lawrence Campbell*
Deputy Clerk	Court Reporter	Asst. U.S. Attorney

U.S.A. v. (DEFENDANTS LISTED BELOW)	ATTORNEYS FOR DEFENDANTS
(1) WILLIAM CARROLL HUBBLESTON	(1) HARVEY SAFFERSTEIN, appid
X present __ custody X bond __ D/R	X present X appointed __ retained
(2)	(2)
__ present __ custody __ bond __ D/R	__ present __ appointed __ retained
(3)	(3)
__ present __ custody __ bond __ D/R	__ present __ appointed __ retained
(4)	(4)
__ present __ custody __ bond __ D/R	__ present __ appointed __ retained

PROCEEDINGS:

as above.

RELEVANT PORTIONS OF TRANSCRIPT OF TRIAL OF SEPTEMBER 18, 1972

* * *

Page 17, line 11 to Page 25, line 24

MR. CAMPBELL: The government would call as its first witness Mr. David D. Reckard.

DAVID D. RECKARD,

called as a witness by the government, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please take the stand.
State your true and correct name.

THE WITNESS: David D. Reckard, R-e-c-k-a-r-d.

THE CLERK: Thank you.

DIRECT EXAMINATION

By MR. CAMPBELL:

Q. Mr. Reckard, what is your occupation?

A. I am a special agent for the United States Treasury Department, Bureau of Alcohol, Tobacco and Firearms.

Q. Where are you presently stationed?

A. Oxnard, California.

Q. Do you know the defendant in this case?

A. I do.

Q. How do you know the defendant?

A. I had cause to arrest him on June 7, 1972, for violation of 922(a)(6) of the Gun Control Act.

Q. Mr. Reckard, with regard to that arrest would you tell me the surrounding circumstances?

A. I obtained an arrest warrant and Special Agent Smith and myself went to Mr. Huddleston's place of em-

ployment at the Dietrich Body Shop in Ventura, California, and placed Mr. Huddleston under arrest. Then we put him in the back seat of the car where we had him handcuffed and put him in the back seat and fastened the seat belt around him.

The first thing that I did after I had him in the car was I read him our rights using our IIIS form 5661 which is the statement of rights card.

We proceeded from the Dietrich Body Shop to the Ventura Police Department where after we got to the Ventura Police Department I showed him the form 4473 that I picked up ---

MR. SAFERSTEIN: Your Honor, at this point I would like to object and take Mr. Reckard on voir dire and also bring my witnesses in on the Jackson v. Denno problem.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. SAFERSTEIN:

Q. Mr. Reckard, you have indicated partially in your testimony here and prior I believe to the United States Attorney, Mr. Campbell, that Mr. Huddleston made certain statements to you after you arrested him, is that correct?

A. That is correct.

Q. Where did Mr. Huddleston make these statements?

A. He made these statements at various places. He made them on the route from Ventura County Sheriff's office to Ventura. The ones that -- some of them, some of them he made while I was questioning him at the Ventura Police Department. Some of them he made while we were returning from Santa Barbara to Ventura.

He repeated these statements to me so you have to ask me which one you are talking about and when.

Q. I understand. Did you ever warn Mr. Huddleston of his constitutional rights to remain silent and be aided by counsel?

A. I did.

Q. When did you warn Mr. Huddleston?

A. Immediately after his arrest and he was placed in the vehicle.

Q. How did you warn him?

A. I read him the form 1661. I read it to him verbatim and asked him if he understood the rights. He said that he did.

MR. HAFFNER: Your Honor, I move to strike those last two sentences as non-responsive to the question.

THE COURT: That will go out.

BY MR. HAFFNER:

Q. Did you read him this form -- what was the form number?

A. Form 1661.

Q. 1661. Did you read that form to him in the back seat of the car?

A. That is correct.

Q. Did Mr. Huddleston say he waived those rights?

A. That is correct.

Q. What did he say?

A. He said that he waived the rights and he understood the rights.

Q. Did he sign any waiver of rights form?

A. He did not.

Q. Isn't it your normal practice to have such waivers signed?

A. It is not.

Q. Do you not have available to you such forms for signing waivers?

A. We do.

Q. Do you ever use them?

A. I never have.

Q. Do you have a Treasury form 4176 that is used for signing waiver of constitutional rights?

A. That is the form number, yes.

Q. Do you have those available to you?

A. I do.

Q. Did you have those in your possession when you arrested Mr. Huddleston?

A. I did.

Q. Why —

A. In my briefcase.

Q. Why did you not use that form?

A. I have never used that form in any case. There was no need in this case, in my opinion, since I had a witness with me that was there and heard the rights being waived.

Q. Are there any directions from the Department of Treasury that agents should use these forms and get signed waivers in investigating and arresting people?

A. Not to my knowledge.

Q. Isn't it a fact that during the arrest of Mr. Huddleston you asked him extensive questions about any information he might have about other persons in possession of certain firearms?

A. That is correct.

Q. Is it not a fact that you suspected Mr. Huddleston would provide you with leads to other persons who might also be violating the gun laws?

A. No.

Q. Is it not a fact that you promised Mr. Huddleston that you would obtain some kind of break for him if he provided some information about other persons with guns?

A. No.

Q. Is it not a fact that you told Mr. Huddleston you could make it easier for him if he would provide you certain information?

A. No.

MR. CAMPBELL: Your Honor, I object that these questions are leading and my understanding of voir dire here the defendant has the witness on direct.

THE COURT: Yes, they are, but I don't think there is any problem, Mr. Campbell.

MR. CAMPBELL: Thank you, your Honor.

BY MR. RAPPENSTEIN:

Q. What exactly did you say to Mr. Huddleston regarding information you wanted from him about other persons?

A. I told him that any information he provided for us would be brought to the attention of the United States Attorney.

Q. What would be the purpose of bringing it to the attention of the United States Attorney?

A. Whatever information — for anything he wanted to do with it.

Q. Did you indicate to Mr. Huddleston that it might go easier for him if he provided that information which you would then convey to the United States Attorney?

A. I did not.

Q. You say in the total conversations you had with Mr. Huddleston — how many minutes would you say?

A. About thirty minutes — thirty to forty-five minutes to Ventura County — the Ventura Police Department. The entire trip from Ventura to Santa Barbara which probably takes between thirty-five and forty minutes, I talked to him while we were in front of the U. S. Magistrate and from the trip in the U. S. Magistrate's office in Santa Barbara back to Ventura where we let him off at his place of employment which took another thirty-five or forty minutes.

Q. How much of that conversation centered around his ability to provide you with information about other people who might be in possession of guns?

A. I couldn't say percentagewise.

Q. Would you say fifty percent?

A. In most of the time at the Ventura Police Department it was in filling out forms that we are required to fill out when we make an arrest of an individual, except for the conversation he filled out the — signed the 4473's. And we talked about many things so I couldn't tell you how much time other than it would be probably in excess of — I couldn't say.

Q. It is true that you talked to him about providing information about other people's possession of guns?

A. That is correct.

Q. Did you indicate to Mr. Huddleston that you would put something in your report if he provided information about other persons in possession of guns?

A. I did not.

Q. Let me just have this one more time. Exactly what did you say to him with regard to the information he might provide you?

A. I told him any information he provided me in that regard would be brought to the attention of the U. S. Attorney.

* * *

Page 70, line 17 to Page 78, line 18

DAVID D. BUCKARD,

having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Bernstein: One minute. Is there any particular ruling on point three?

The Court: What is that?

Mr. Bernstein: Point three is the per se exclusion.

The Court: There is no per se exclusion. I find absolutely no authority for per se exclusion of anything since I think that in law enforcement you are entitled to ask people if they want to help to find out about violations by other people.

As a matter of fact, in some aspects of law enforcement that is the only way they can get it done, Mr. Bernstein, that is the only way.

Mr. Bernstein: I understand. I just wanted a ruling on that. Thank you.

DIRECT EXAMINATION (Resumed)

By Mr. Campbell:

Q. Mr. Buckard, directing your attention to the period after the defendant's arrest that day, after you read him his rights, did you ask him any — did you show him any documents?

A. Yes, I showed him three form 4473's that I had acquired from Saul's Loan and Jewelry Company.

Mr. Campbell: Your Honor, there are three documents in front of the clerk marked for identification as Govern-

ment's 2, 3 and 4. At this time I would like to make an offer of proof that these documents, if the custodian of these documents would come and testify that they are kept by him as business records.

THE COURT: All right.

THE CLERK: Government's Exhibit's 2, 3 and 4 marked for identification.

(Exhibits were marked Government's Exhibits 2, 3 and 4 for identification.)

THE CLERK: And placed before the witness.

BY MR. CAMPBELL:

Q. Mr. Rachard, with respect to these documents, did you ask the defendant any questions?

A. Yes.

Q. What did you ask the defendant?

A. I showed him the three forms after I had read him his rights. I asked him if he signed these forms. He looked at each of the three forms and said he signed the forms.

I asked him when he answered the forms if he knew he was a felon and he said, yes, he was a felon. He was a three-time felon.

Then I later asked if he knew he had lied when he said no to the answer to question 8(b), and he said "Yes," he knew he had lied when he answered "No" to the question, but he was only getting the guns back from a gun shop and was not buying any guns.

Q. Do you recall exactly the point in time when you asked him these questions the first time?

A. The first time was on the way between the Ventura Police Department on the way to Santa Barbara. I asked these questions several times because we were talking about

this. I asked him at least on one other occasion which I do not recall. I think the first time was between Ventura.

Q. *Was just the one time we have already established he was advised?*

A. It was on the way to the Ventura Police Department for arraignment before the U. S. Magistrate.

Q. *That was the same afternoon?*

A. The same afternoon — about — the same afternoon we left Ventura Sheriff's Department. It was about 2:30 so it was the same afternoon.

Mr. Caldwell: I have no further questions of the witness, your Honor.

The Court: All right.

Cross examination?

Mr. Sarmarian: Yes, your Honor.

* * *

Page 78, line 1 to line 24

By Mr. Sarmarian:

Q. *Before the time you questioned Mr. Huddleston, was it your opinion he was a three-time felon?*

A. That is correct.

Q. *Was it your impression that he was a three-time felon when you first reported the case to the U.S. Attorney?*

A. That is correct.

Q. *When were you informed he was not a three-time felon?*

A. Just before — when they indicted him, I believe, or just before it went to indictment.

Q. *When would that date be?*

A. I couldn't say. I don't recall.

Q. Who informed you of that?

A. It was a phone call from the U.S. Attorney's office, a message left in my box.

Q. From whom did that message come?

A. I don't recall. They called me and the message was that the two of the convictions were not felonies; however, one was. That was the message I received. It was still presented and I would have to appear to meet the board for indictment. I did appear to meet the grand jury for indictment.

* * *

Page 87, line 1 to Page 92, line 24

MORRIS GOTTLIEB,

called as a witness by the government, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your true and correct name.

THE WITNESS: Morris Gottlieb, G-o-t-t-l-i-e-b.

MR. CAMPBELL: May Government's Exhibits for identification 2, 3 and 4 be placed before the witness?

THE CLERK: Government's 2, 3 and 4 before the witness.

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. What is your occupation?

MR. SAPERSTEIN: Could I just ask what 2, 3, and 4 are?

MR. CAMPBELL: Those are the three Treasury forms 4473's.

MR. SAPERSTEIN: Thank you.

THE WITNESS: I am a pawnbroker.

BY MR. CAMPBELL:

Q. What is the name of your business, sir, the name of your business?

A. Saul's Loan and Jewelry. S-a-u-l-s Loan and Jewelry. You want the address?

Q. Please.

A. 536 South Oxnard Boulevard, Oxnard, California.

Q. Mr. Gottlieb, have you ever requested a license as a gun dealer under Chapter 44 of Title 18 United States Code?

A. Yes.

Q. Do you have such a license?

A. Yes.

MR. CAMPBELL: Your Honor, may I approach the clerk?

MR. SAPERSTEIN: I object to that question, your Honor. I move to strike the answer on the grounds it is conclusory.

THE COURT: The objection is overruled.

THE CLERK: Government's Exhibit 5 marked for identification and placed before the witness.

(Said exhibit was marked Government's Exhibit 5 for identification.)

BY MR. CAMPBELL:

Q. Now, Mr. Gottlieb, first of all with respect to Government's Exhibit 5 for identification, do you recognize those documents?

A. You mean the license?

Q. Yes.

A. Yeah.

Q. Do you recognize it? Is that a copy of the license issued to you?

A. Yes, 05859. I remember that number all the time.

Q. Is that your application?

A. That is the number 05859, yeah.

Q. Is that your application attached to it?

A. Uh-huh.

Mr. Cranwell: At this time I move Government's 5 into evidence.

The Court: Objection?

Mr. Harrington: Yes, your Honor. I have just barely seen it, but it is my recollection that the document on top is not signed. There is no evidence that it is a license. It is a typed carbon. I don't know what it is.

The Court: Let me see the document.

(Brief pause.)

Mr. Harrington: There is a place on it for a signature that says it is a license but there is no signature there.

The other document, as I understand it, is an application which does not indicate whether or not he was licensed.

The Court: The objection is sustained.

Mr. Saferstein, is there any question that this man is a licensed gun dealer, that he has made application and license has been issued to him?

Mr. Harrington: Is there any question about it?

The Court: Yes.

Mr. Harrington: I have no first-hand knowledge whether or not he is.

The Witness: Twenty-six years I have been in the business. We have twenty-six licenses.

By Mr. Campbell:

Q. Mr. Gottlieb, do you recognize the three yellow documents before you that have been marked for identification as Government's 2, 3 and 4?

A. Yes, sir.

Q. What are those documents?

A. 4473 forms.

Q. Treasury forms 4473?

A. 4473 forms.

Q. Do you recognize the signature on those forms?

A. Yes.

Q. Whose signatures appear there?

A. William Huddleston.

Q. At the bottom?

A. And my name, Morris Gottlieb, as owner. Vacilio Ampara as clerk and Vacilio Ampara as clerk.

Q. The other person that you mentioned, is he an employee of yours?

A. Yes, sir.

Q. Is there a standard procedure in your pawnshop for filling out these forms?

A. Yes, sir.

Q. What is that standard procedure?

A. The procedure is when they pick up their rifle or pistol, or anything pertaining to that, they have to fill out one of these forms and answer all the questions and sign their name. Then they show their identification. And then from the bottom on we take it and put it — fill in the type of rifle and what gauge it is and the serial number. Then we sign our name.

Q. Do you follow that procedure in every transaction?

A. Yes.

Q. The clerk that you mentioned, do you know for a fact whether or not he knows this procedure?

A. Yes, sir.

Q. How do you know?

A. Because I am right on top of him all the time. There is no other procedure. It is the only way we can do it.

Q. Have you observed him make transactions?

A. Yes, sir.

Q. Have you ever observed him not to follow that procedure?

A. No.

Q. Are those records maintained by your shop?

A. Yes, sir.

MR. CAMPBELL: Your Honor, at this time I move those three documents into evidence as 2, 3 and 4.

THE COURT: Is there any objection?

MR. SAPERSTEIN: I object to the documents. I don't know which ones they are, but there are two that do not have Mr. Gottlieb's signature on them. I do not believe he has any first-hand knowledge of those documents.

MR. CAMPBELL: Does your Honor wish argument?

THE COURT: Are these records kept in the normal course of the business of Saul's Jewelry Company?

THE WITNESS: Yes.

THE COURT: Is it the normal course of Saul's Jewelry Company to keep such records?

THE WITNESS: Yes.

THE COURT: The objection is overruled.
2, 3 and 4 in evidence.

* * *

Page 94, line 8 to Page 97, line 25

CROSS EXAMINATION

BY MR. MARENSTEIN:

Q. Mr. Gottlieb, what kind of business do you do in your store? In terms of the crowd there, usually is it a lonely place or are there times when it is crowded?

A. Well, that is a matter of business. We are pretty crowded all the time, pretty busy I would say, yeah.

Q. These form 4473's, are you required by the Treasury Department to fill those out, is that correct?

A. Yes, sir.

Q. That is an activity that helps your business or hurts your business?

MR. CAMPBELL: Objection, your Honor, irrelevant.

THE COURT: The objection is sustained.

BY MR. MARENSTEIN:

Q. What is your attitude toward filling these out? Is it to take care with them or do you consider them a nuisance?

A. It is the law and we have to abide by the law.

Q. Do you normally read the questions to the people who come in picking up guns?

A. We stay right there and see that they fill it out. If sometime we have Spanish-speaking people we have a Spanish boy in there and he explains it to them.

Q. Do you read the questions on part 8 of the form to the person?

A. I don't know what part 8 is.

(Brief pause.)

Q. Part 8 is part of section A, certification of transferee or buyer.

A. No, we don't read that to them.

Q. *Do you tell them how to answer any questions?*

A. Sir, we certainly do.

Q. *What do you tell them?*

A. Well, we tell them to start from the top and fill it out and read all the questions and answer all the questions and sign their name.

Q. *Do you tell them how to answer those questions?*

A. No, I don't tell them how to answer the questions.

Q. *Do you tell them if there are no answers they don't get their gun back?*

A. I don't tell them that.

Q. *Now, just so we get the situation down, a pawn situation is a loan, is that correct?*

A. Yes, sir.

Q. *And the item is pledged as security for that loan?*

A. Yes, sir.

Q. *And you are required by law to have these form 4473's filled out before the debtor can reobtain his gun from pledge?*

A. When he comes to pick up the gun.

Q. *When he comes to pick up the gun it is a precondition to him picking up the gun?*

A. To fill out the form 4473.

Q. *Do you tell them that when they bring the gun in?*

A. No.

Q. Do you read the forms to see they are filled out before you give them the gun?

A. Yes.

Q. How carefully do you read them?

A. Pretty carefully because —

Q. Why do you have to be careful about it?

A. Well, we got — that is the way the government wants it. We have to be careful because if we are not careful then they come to us.

Q. What answers would have to be on part A for you to give the gun back? Is there some sort of crime if they are not set down —

A. Part A1

Q. Part 8, I am sorry, of section A.

A. Section B1

Q. No, section A, question 8.

A. Yes, we read that. Yeah, this is the first — we make sure We a yes or a no.

Q. What answer would have to be there for you to give the guns back?

A. It would have to be — if they put a "Yes" down, we don't give them the gun back.

Q. They all have to be "No"?

A. Yeah! They will have to be No's.

Q. Would you allow a gun to be redeemed by someone who answered yes to the question "Are you a fugitive from justice?"

A. If they answer yes?

Q. Yes.

A. No. They don't get the gun.

Q. Would you allow a gun to be redeemed by someone who answered the question "Are you an alien in the United States?"

A. Yes —

The Court: He already said unless all answers are no he does not get the gun back. Why do you have to go individually?

* * *

Page 100, line 4 to line 18

Q. I understand that. You cannot tell me —

A. You asked me that before. It had to be answered all no's before I let the gun go out.

Q. Now, would you have allowed the gun, any of these guns, to be redeemed by the person who filled out these forms if they had refused to answer any of the questions?

A. Yes.

Q. You would have allowed it to go out?

A. No, they don't go out. I am sorry. I misunderstood. They don't go out. We have trouble too. I am not picking on race, but we have some colored people that don't know how — they just can't grasp. We have to sit with them and sit with them sometimes for a half an hour and make sure that they answer the questions right.

* * *

Page 101, line 23 to Page 102, line 24

Q. What is your relationship to Mr. Rechard?

A. No relationship.

Q. Do you know him?

A. I know him only by sight, name as a Treasury man.

Q. How many times have you seen him?

A. Well, possibly once a week and sometimes twice a week when he has business. Sometimes it is once every two months. Definitely he reviews all the records once a month. Every month he takes down all the records for the month.

* * *

Page 111, line 8 to Page 115, line 12

MR. SAFERSTEIN: I have no further questions.

THE COURT: Redirect?

MR. CAMPBELL: No, your Honor.

THE COURT: Mr. Gottlieb, do you have records for the underlying transaction represented by this?

THE WITNESS: I have my pawn records.

THE COURT: Would you hand them to the clerk.

THE WITNESS: This is the original copies, which one goes to the police department and one goes to Sacramento.

THE COURT: Mark them as Court's 1, 11 and 111.

(Said exhibits were marked Court's Exhibits 1, 11 and 111 for identification.)

THE WITNESS: And I also had my original license.

THE COURT: Will you show that to Mr. Saferstein.

MR. SAFERSTEIN: I have seen it and I am willing to stipulate.

THE COURT: All right.

MR. CAMPBELL: So stipulated, your Honor.

THE COURT: Is there any objection to 5 then?

MR. CAMPBELL: Your Honor, I think at this point both of us will stipulate Mr. Gottlieb was in fact at the time in question a licensed dealer within the meaning of the statute.

THE COURT: All right.

Is that the stipulation?

MR. HAFFENREFER: I thought I was stipulating to the admissibility of the documents.

MR. CAMPBELL: Either way.

THE COURT: 5 is a true copy of the license issued to Mr. Gottlieb?

MR. CAMPBELL: So stipulated.

THE COURT: Is there any objection as to its admissibility?

MR. HAFFENREFER: No objection.

THE COURT: 5 in evidence.

(Exhibit marked Government's Exhibit 5 for identification was admitted in evidence.)

MR. CAMPBELL: Your Honor, at this time may I request —

THE COURT: Just a second.

(Brief pause.)

THE COURT: You have handed me some documents, Mr. Gottlieb, which the clerk has marked as Court's Exhibits I, II and III. Are these records kept in the normal course of the business of Saul's Jewelry Company?

THE WITNESS: Yes.

THE COURT: Is it the normal course of business to keep such records?

THE WITNESS: Yes. It isn't by law. I don't have to keep those records but we do it so to save time on the next loan. If it is the same type of loan it is made on the same type of gun and we have the records that are already in there. On the information, instead of looking for the serial number and everything, it is already in there. And we also know the amount we gave for the loan.

The Court: Do you have any other records with reference to this transaction other than what you have now given me?

The Witness: 4473's. We have the redeemed records.

The Court: That is these exhibits, Court's 1, 11 and 1111

The Witness: These are the loan records.

The Court: Do you have the redeemed records with you?

The Witness: No, I don't.

The Court: Is there anything further?

Mr. Campbell: No further questions.

Mr. Saferstein: May I ask the Court whether those are exhibits in this case or not?

The Court: I am now going to admit them as Court's 1, 11 and 111, the pawn records.

Mr. Saferstein: I would object to that.

The Court: The objection will be noted and overruled.

Mr. Saferstein: May I see them?

The Court: Certainly, you may.

Court's Exhibit 1, 11 and 111 in evidence.

(Exhibits marked Court's 1, 11 and 111 for identification were admitted in evidence.)
(Documents passed to counsel.)

The Court: Mr. Saferstein, I would assume you would want them because they would bring you directly within the Leisure case without any question.

Mr. Saferstein: I thought I was. I just thought you didn't like the Leisure case.

The Court: No. That may be two reasons, Mr. Saferstein. It may be, Mr. Saferstein, and all the documents

which you have filed indicated that these guns belong to Mrs. Huddleston and that was the distinction that was drawn by the government. That might be a valid distinction on appeal.

MR. SAPERSTEIN: I recognize that, your Honor.

THE COURT: All right.

BY MR. SAPERSTEIN:

Q. May I ask you, Mr. Gottlieb, if I may about Court's I, II and III.

Did I hear you right, those are not the records of redemption?

A. No. Those are the records of —

THE COURT: Pawn.

THE WITNESS: That is the first records that they pawned. The redemption is just a duplicate of this card. The only thing is signed that they redeemed it. In other words, they have a yellow pawn slip. They bring it in. They sign their name that they redeemed it.

* * *

Page 116, line 1 to line 19

MR. CLEVENGER: Also, your Honor, in order to shorten time, the government would offer a stipulation.

If Eugene W. Kuhl, of the Oxnard Police Department were called, it is stipulated he would be deemed called, sworn and testified and qualified as an expert in handwriting comparison; that on Government's Exhibits 2, 3 and 4 the handwriting to the questions 8A, B, C, D, E, F and H on each of those three forms is the signature of William Huddleston and in his opinion is the handwriting of the defendant.

THE COURT: Is that satisfactory?

MR. SAXBURGER: We have no objection. I see no reason to frame it that way. I am willing to stipulate that that is his handwriting.

THE COURT: That is his handwriting.

Do you accept the stipulation that that is his handwriting?

MR. CAMPBELL: Yes, your Honor.

THE COURT: All right.

* * *

Page 117 line 9 to line 16

MR. CAMPBELL: Your Honor, at this time the government would rest.

THE COURT: All right.

MR. SAXBURGER: Your Honor, at this time I would move to acquit under Rule 29 for the following grounds.

The first ground I realize has been ruled upon, that is that any false statements that may have been given to question 8B are immaterial, have not been proved to be material to the lawfulness of the sale because of the fact that there was no answer given to 8C on any of the three forms. Therefore, the false answer to question 8B was immaterial.

The second ground for our motion to acquit is that I do not believe the government has carried its burden of proof of showing there was any transfer of

* * *

Page 120, line 25 to Page 127 line 1

THE COURT: The motion for judgment of acquittal will be denied.

* * *

Page 127, line 18 to Page 128, line 8

THE CLERK: Item No. 8, 10760 — Criminal, United States of America v. Charles Huddleston.

MR. HAYENSTEIN: Basically, your Honor, our case will show that this was not what we think is the kind of case that ever should have been brought in the federal courts.

First, we will show this is not the case of a defendant illegally in possession of dangerous firearms like hand guns or submachine guns, but rather this is a case involving hunting rifles and antique rifles, collector's rifles which were bought by the defendant's wife mainly for investment and collection.

We will also show this is not the case of a person buying rifles —

THE COURT: Isn't that argument, Mr. Hayenstein? The law says certain things and that is really argument as to whether or not if a 30-30 rifle Winchester or a 22 rifle Remington, or a Russian 7.62 rifle is within the statute or within, at least within the meaning of the statute, isn't that all really argument?

MR. HAYENSTEIN: Perhaps so, your Honor.

* * *

Page 129, line 14 to Page 133, line 23

MR. HAYENSTEIN: Basically, the facts we intend to prove are as follows, your Honor.

Mrs. Huddleston owned three rifles which she bought in her name. One of these was a Winchester 30-30 rifle which was gold-plated, sold mainly as a commemorative weapon. The second rifle is an antique Russian rifle which Mrs. Huddleston bought as a collector's rifle. The third was a Remington 22.

In 1971 the financial situation of the Huddleston's became very serious. Mr. Huddleston had to quit work because there was no work at the auto repair shop where

he worked. Mrs. Huddleston suffered severe heart attacks and was incapable of bringing in any further money. And to top it off, the Huddlestons and their ten year old son were evicted from the house because it was condemned as unsafe. In order to bring money into the house they sold the rifles. Mrs. Huddleston, however, was too sick to take them to the pawnshop even though they were in her name. Mr. Huddleston took them at various times to Saul's Jewelry, where he received $10, $15, $20 for the rifles. Later the Huddlestons' financial situation improved to the point they were able to redeem the guns from pawn so as not to lose them. However, Mrs. Huddleston was not still very healthy.

THE COURT: You are still trying to get yourself out of the Laisure case, aren't you? You are in it now. You might as well stay there.

MR. SAPERSTEIN: We have a community property state, your Honor.

THE COURT: That ain't gonna' help you. You are in as good a state as you can be in in terms of Laisure right now on the law.

MR. SAPERSTEIN: I understand the Laisure frying pan-fire situation.

THE COURT: But you are trying to get yourself into the fire.

Let us assume that the Laisure situation is the frying pan and the frying pan does not have any grease and any fire under it now. That is what you are trying to put it in there.

MR. SAPERSTEIN: The fire is illegal possession.

THE COURT: But Laisure has already taken care of that in terms of the Fifth Circuit, at least. The Ninth Circuit has not spoken and neither has the Supreme Court spoken on that question. But the best you can do for your client

I would think, I am not going to try your case, but the best you can do for your client is get yourself right within these facts. Don't bring in anything extraneous, for instance, that these guns — if you take the position that it is community property you are in good shape right now because the pawn ticket is in Mr. Huddleston's name. That puts you right smack dab in Leisure. If they are Mrs. Huddleston's guns then you've got a possible distinction which can be drawn by this Court and this Court may be upheld by the court of appeals and then you are in big trouble.

MR. HAYWORTH: I understand the distinction on the Leisure. On the other hand I am somewhat fearful of putting my client in the position of admitting illegal possession of guns which he might be doing.

THE COURT: He is not being charged with that. If Leisure is right there is no problem. If it is not right then what difference does it make. He has already been prosecuted. He can't be prosecuted anymore, can he? He can't be punished again because the state court has a rule that you can't be punished for basically the same offense out of the same transaction, not having to do with double jeopardy.

MR. HAYWORTH: I am wondering, your Honor, having put yourself in the Leisure situation and then it's your own gun, and therefore a dismissal on the question of whether you filed a false form holding it is not applicable in that situation. I do not see what stops the government from then bringing a case on possession.

THE COURT: Well, they can't on possession because Bass has already taken care of that. The Supreme Court has spoken on that issue. That is why they didn't bring it here.

MR. HAYWORTH: Well, I am fearful — Bass only requires them to show interstate commerce nexus.

THE COURT: Well, with reference to the possession.

MR. SAVERNTHIN: That is right.

THE COURT: Obviously they cannot do that here or they would have brought that charge too unless things have changed upstairs.

MR. SAVERNTHIN: Well, it is my contention and that is why I pointed it out in the brief, that things have changed upstairs because it is much easier in bringing these false statement cases than it is in possession on proof, especially when it comes to interstate commerce. I have no guarantee that my client will not be prosecuted for possession if I sacrifice my Laisure rights by putting him into the situation where he admits ownership of those guns.

THE COURT: Maybe we can get Mr. Campbell to commit himself on the record for the government as to whether or not the government contemplates any further proceedings in the event of any disposition of this matter.

MR. CAMPBELL: You are sort of asking me to help the defendant place himself in a position that I really hope he doesn't go into, your Honor.

I think it is the policy of our office that once we have had, you might say, one swing at a person we do not go at him again. I would say on that basis, regardless of the result of this case, we would not be charging the defendant with any collateral crime that arose out of these same transactions. If we had any intention we would have already done so.

MR. SAVERNTHIN: Thank you, your Honor.

* * *

Page 137, line 1 to Page 151, line 18

WILLIAM CANNON HUMMERTON, the defendant herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your true and correct name.

THE WITNESS: William Carroll Huddleston.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. BAYERSTEIN:

Q. In September 1971, Mr. Huddleston, can you describe the financial situation of you and your family at that time?

A. It was very bad. We did not even have grocery money.

Q. Did you have a job in September of '71?

A. I had a job. I quit the job I was working at in September. We weren't doing anything at the shop. It was so slow there just wasn't any work. It had been that way for a month or two before.

Q. What kind of job was that?

A. Automobile painter.

Q. How was your wife's health at that time?

A. It was bad. She was just recuperating from a heart attack.

Q. Was she able to bring in money as she had before?

A. She wasn't even able to drive. She wasn't even supposed to be out of the house.

Q. What was your housing situation in September and October of '71?

A. In October they evicted us from our house. I have a clipping of the story from the Star-Free Press if you wish to see it.

Q. Where did you go after you were evicted?

A. We set our furniture out in the street on some city property.

Q. Do you have the article with you?

A. Yes, I do.

Q. Could you hand that to me?

I would like to have this identified as Defendant's Exhibit B.

THE COURT: B for identification.

Is there any objection, Mr. Campbell?

MR. CAMPBELL: Your Honor, I would object to this line of questioning on the grounds of relevancy.

MR. HAFFNERTH: I am just trying to show his state of mind during the relevant events as to his ability to comprehend.

THE COURT: As to that issue, the objection is overruled.

Any objection to this article?

MR. CAMPBELL: No, your Honor.

THE COURT: B in evidence.

(Said exhibit was marked Defendant's Exhibit B for identification and admitted in evidence.)

MR. HAFFNERTH: Thank you, your Honor.

Q. Now, this case, as you know, involves three guns which were pawned by you at Saul's Loan and Jewelry. Could you describe those three guns?

A. One of them was a Winchester 30-30, Golden Spike commemorative.

One was a 7.62 Russian and the other was a 22 semi-automatic Remington.

Q. How old was the Russian gun?

A. It is 1926.

Q. Did you pawn these three guns that we have described?

A. Yes, I did.

Q. When did you make the first pawn?

A. I believe it was in September of '71.

Q. Which gun did you pawn?

A. The 22.

Q. What did you get as a loan on that?

A. $10.

Q. Did you pawn the other two guns?

A. Yes, I did.

Q. When did you pawn the next one?

A. I believe it was the day after I was evicted from my house. I was evicted in October.

Q. Which gun was that?

A. That was the 30-30.

Q. How much did you get for that gun?

A. $25.

Q. When did you pawn the third gun?

A. The third gun I pawned right after that. I pawned the third gun in October.

Q. Why did you pawn those guns?

A. We had to have grocery money. We didn't even have money for groceries.

Q. Did your finances change after that, sir? You had the money to pick up these guns?

A. Some, yes.

Q. Which gun did you pick up?

A. In January I picked up the 22.

Q. Did you fill out and sign a Treasury form with regard to that?

A. Yes.

Q. Is that Treasury form one of the three forms that the government has introduced in evidence and which I have shown to you prior to this case?

A. Yes, it is.

Q. The 22 in January?

A. Yes, I believe it was the 22.

Q. Did you put the 22 back in?

A. Yes, I did.

Q. Why did you put it back in?

A. I ran out of grocery money again. I had to have some money for just a short time.

Q. Did you sign the three forms which the government has introduced as exhibits when you picked up the guns?

A. Yes, I did.

Q. I am going to show you these forms. May I approach the clerk?

THE COURT: All right.

BY MR. HARRINGTON:

Q. I am handing you Exhibits 2, 3, 4; did you sign these forms?

A. Yes, I did.

Q. Did you read them before you signed them?

A. No, I did not.

Q. Did you read the questions in the fine print in section 4?

A. No, I didn't.

Q. Why didn't you read those forms?

A. Well, they was rushed in there and the guy just throwed the one form out there and he says, "Fill in your name and address on those three little marked lines. Mark no and then sign it and we will release your guns."

Q. Did the pawnbroker or the clerk involved explain these questions to you?

A. No, sir.

Q. Did he read the questions to you?

A. No, sir.

Q. Was the pawnshop crowded at that time as you picked these guns up?

A. Yes, they were.

Q. Did the pawnbroker explain to you that any wrong answer to any of those questions on that form might subject you to criminal penalties?

A. No.

Q. Did you understand that this form related to firearms in particular?

A. No, I didn't. I thought it was a release from the pawn ticket.

Q. How is your reading ability?

A. I can read slow. I am not a very fast reader. I don't have very much education.

Q. What was the highest grade you attended in school?

A. Five.

Q. When you filled out these three forms in connection with taking these guns out of pawn, were there other people waiting to transact business at the loan counter?

A. Yes, there was.

Q. *Did the clerk or the person who asked you to fill out the forms rush you in any way?*

Mr. Campbell: Your Honor, the defense seems to be leading his witness.

The Court: That is right.

Mr. Hafenstein: I am sorry, your Honor.

The Court: You are leading.

By Mr. Hafenstein:

Q. *How much time did you spend filling out each of these three forms?*

A. It would be hard to say, probably half a minute or so, that is why they are so scribbled.

Q. *When was the first time you were aware of the nature of the questions that were being asked on that form?*

A. In your office I believe — no. Wait a minute. I think Mr. Heckard told me something about it at the time of my arrest.

Q. *Did Mr. Heckard tell you that one of the questions on that form involved a question of your past convictions for crimes?*

A. Yes.

Q. *Have you subsequent to your filling out these forms read question #21?*

A. I have.

Q. *On this form?*

A. I have not read it.

Q. *Are you aware of the question it asks at this time?*

A. You explained it to me in your office.

Q. Now you understand that question asks have you been convicted of any crime punishable for a term of punishment exceeding one year?

If you were asked that question during any time before your arrest, what would you have answered?

A. No.

Q. Why is that?

A. Well, my attorney and my probation officer both in Ventura told me that when I completed my probation period and made restitution on these insufficient checks that it would go on record as a misdemeanor.

Q. How many days in jail did you serve on the conviction in California for insufficient funds?

A. I served fifteen days on the honor farm.

Q. Did the attorney you had for that representation on that crime tell you anything about the maximum term on the charge?

A. He told me that I couldn't get over a year.

Q. Did you ever tell Mr. Reichard at any time that you had given a false answer to the questions on this form?

A. No. He told me and I neither admitted or denied it.

Q. What did he tell you?

A. He told me that I had lied on these forms.

Q. Did you tell him anything about your past conviction for felonies?

A. No. He told me I had three -- was a three-time felon. I neither admitted or denied it to him.

Q. What did you say to him?

A. I never said anything to him.

Q. Did you ever tell him you had been convicted of a felony?

A. No, I did not. He told me that I had been convicted of a felony and I neither admitted or denied it to him.

Q. Have you ever read all the questions under section 8 on Exhibits 2, 3 and 4? Would you take a look at them.

(Brief pause.)

A. I have never read any of them.

Q. Have you ever read the entirety of that form?

A. No.

Q. How long do you think it would take you to read that form?

A. I have no idea.

MR. BERNSTEIN: That is all I have, your Honor.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. CAMPBELL:

Q. Mr. Huddleston, you say you filled out those forms very hurriedly?

A. I did.

Q. Is it your practice to fill out forms without reading them?

A. In many cases, yes.

Q. And you signed your name without reading what you signed your name to?

A. In many cases, yes.

Q. Isn't it true that your wife purchased these guns?

A. Pardon?

Q. Isn't it true that your wife bought these guns?

A. Yes, it is.

Q. Was she in the hospital at the time you pawned them?

A. No, she was just out.

Q. Just out of the hospital?

A. She had seven heart attacks in June.

Q. And you pawned them because she needed the money?

A. We needed the money for groceries.

Q. Have you ever fired any of these guns?

A. Up in the mountains target practicing, yes.

Q. Each of the guns?

A. Yes.

Q. When asked by your counsel you stated that you didn't answer questions that Mr. Reichard directed to you in the car, is that right?

A. I did answer questions that he asked me on different things.

Q. Isn't it true that during the course of that questioning he asked you, "Didn't you know that you lied on the form?" and you answered "Yes"?

A. I did not answer.

Q. What was the maximum sentence you say you were told that you were going to serve on that state offense or could have served?

A. My attorney told me that I could have got up to one year in the county jail.

Q. Did the judge ever tell you what sentence you were getting?

A. No, sir.

Q. Or could have gotten?

A. No, sir.

Q. Were you ever asked that when you went before the municipal court and were arraigned on that matter?

A. No.

Q. During the course of that conviction didn't you admit a prior?

A. Yes.

Q. Did you ever ask anybody why it was involved?

A. No, I did not.

Q. If that had any effect on the sentence?

A. No.

Q. Your attorney never explained that to you?

A. No, he didn't.

Q. That is your handwriting on the form?

A. It is.

MR. CHARNOW: No further questions.

THE COURT: Redirect?

MR. SAVARESE: None.

THE COURT: Mr. Huckleston, do you understand the difference between a misdemeanor and a felony to be one year in county jail and more than two years, is that what you understand?

THE WITNESS: Yes.

THE COURT: When you were arraigned on your charge in Ventura County, weren't you advised at that time that you were being arraigned on a violation of 470(a), a felony?

THE WITNESS: I was not.

THE COURT: Wasn't that read to you as part of the complaint?

THE WITNESS: Yes, this is true. But as I said, my probation officer and my attorney both told me that when I made restitution on these checks and my probation was over that it would go on record as a misdemeanor.

THE COURT: But that was after the thing, wasn't it?

THE WITNESS: No, that was during the thing.

THE COURT: When you were arraigned you thought you could get more than one year, didn't you?

THE WITNESS: Yes.

THE COURT: You were told that weren't you?

THE WITNESS: Yes.

THE COURT: That you could get more than one year?

THE WITNESS: But that they wasn't going to.

THE COURT: That was as a result of some kind of a bargain that your lawyer made with the D.A., is that right, with the judge?

THE WITNESS: I have no idea.

THE COURT: Did he tell you that he worked out something with the District Attorney and that the judge would not give you more than a year?

THE WITNESS: He did. That if I would make restitution that they would put me — give me the probation.

THE COURT: Did you get a copy of these forms that you filled out?

THE WITNESS: Which form is that?

THE COURT: 4473.

THE WITNESS: No.

THE COURT: Didn't you look at any part of that form?

THE WITNESS: The only thing I looked it is after he throwed it over there I wrote out my name, my height, weight and I put in my address and wrote no down here and signed my name and that's that.

THE COURT: Did you read the black printing at the top of the form that it is a U.S. Treasury form?

THE WITNESS: I did not pay no attention to it. No, sir, I did not.

THE COURT: Three times you filled out that form and you never realized you were filling out some form for the United States Treasury Department?

THE WITNESS: I did not.

THE COURT: Or that eagle up there was the same thing that you find on your income tax form?

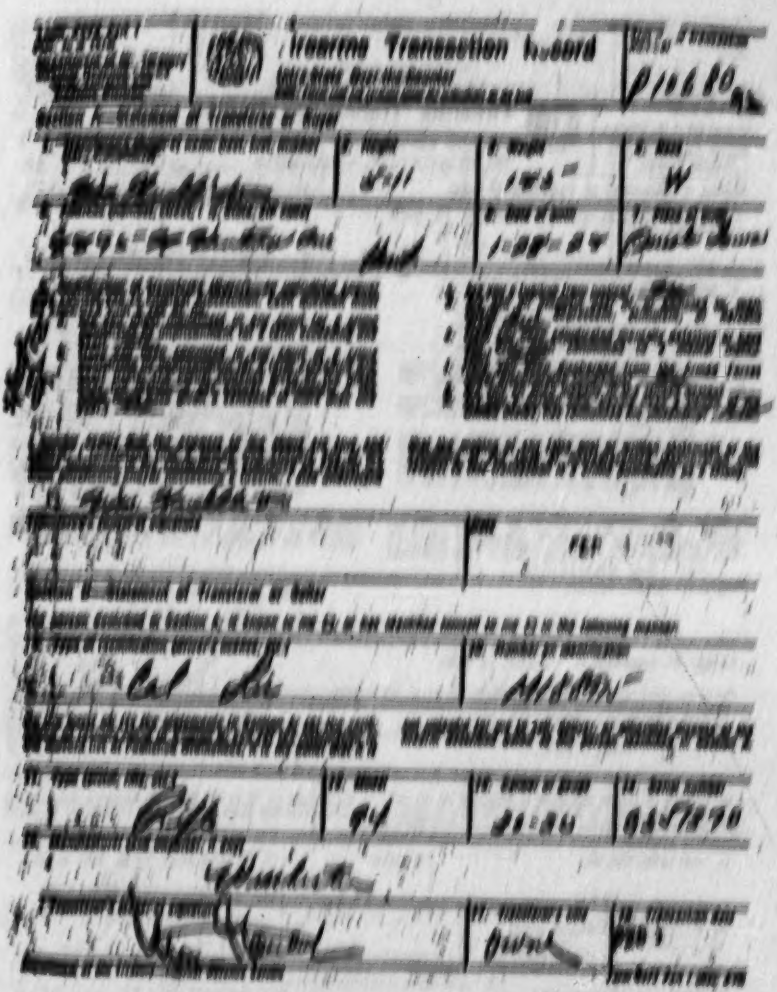
THE WITNESS: I did not even notice it. I did not pay any attention to it.

THE COURT: Anything further?

THE WITNESS: My main interest was in redeeming the guns before the time run out on us for us to keep them out of pawn.

THE COURT: Anything further?

MR. CAMPBELL: No, your Honor.



GOVERNMENT'S EXHIBIT 8

FACSIMILE COPY

Firearms Transaction Record

Copy 4 - Retained by Transferor

Section A - Statement of Transferee or Buyer

1. Name: (Last, First, Middle)
Mc; Huddleston

2. Height
5'11

3. Weight
185

4. Race
W

5. Address (Number, Street, City, State, ZIP Code)
6666 N; Ventura Ave;; Vent;

6. Date of Birth
1-28-38

7. Place of Birth
Osceola; Iowa

8. [illegible]

Transferee's Date of Signature
Feb; 1; 1972

Section B - Statement of Transferor or Seller

The person described in Section A is known to me (1), or has identified himself to me (2) in the following manner:

9. Type of Identification Produced (Driver's License, etc.)
Dri; Lic;

10. Number on Identification
H166915

11. Type (Pistol, Rifle, etc.)
Rifle

12. Model
94

13. Caliber or Gauge
30-30

14. Serial Number
4651470

15. Manufacturer (and Importer, if any)
Winchester

16. Transferor's Licensed Signature
/S/ Wes Gaylor

17. Transferor's Title
Owne

18. Transaction Date
Feb; 1; 1972

Department of the Treasury - Internal Revenue Service

GOVERNMENT'S EXHIBIT 3

Firearms Transaction Record

1293.5

FACSIMILE COPY

Firearms Transaction Record

Mr. William Huddleston

8888 N. Ventura Ave., Ventura

5-28-28

Oxnard, Iowa

May. 10, 1973

081. 510.

M1888911

Rifle

999

22

1411988

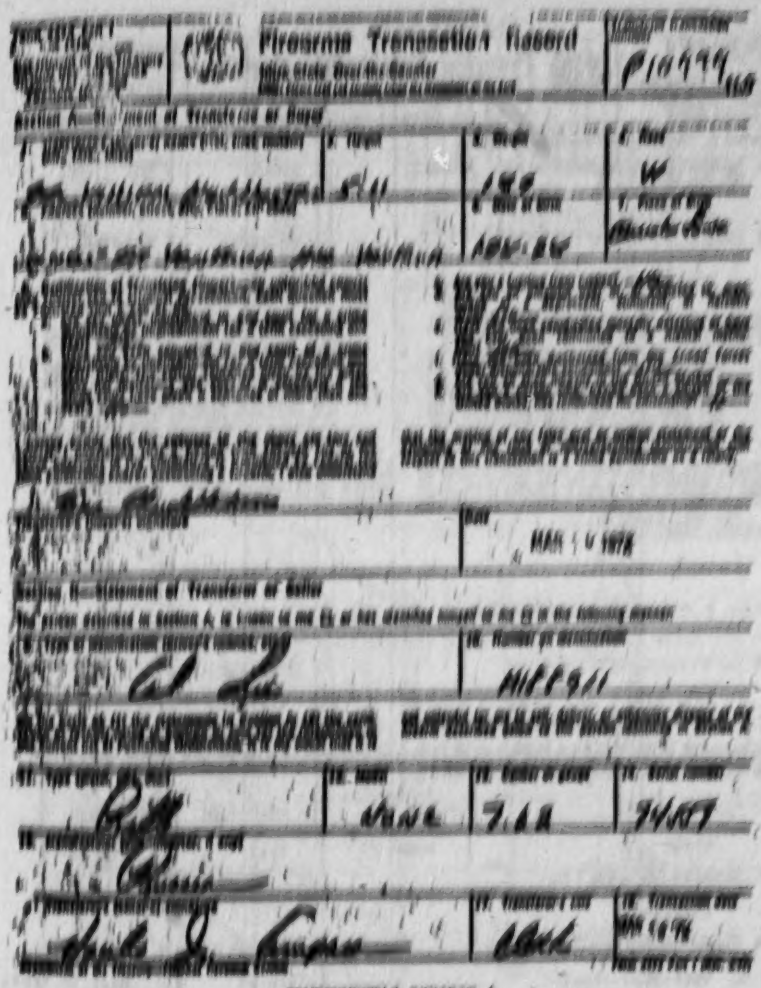
Remington

/S/ Vasilia S. Ampara

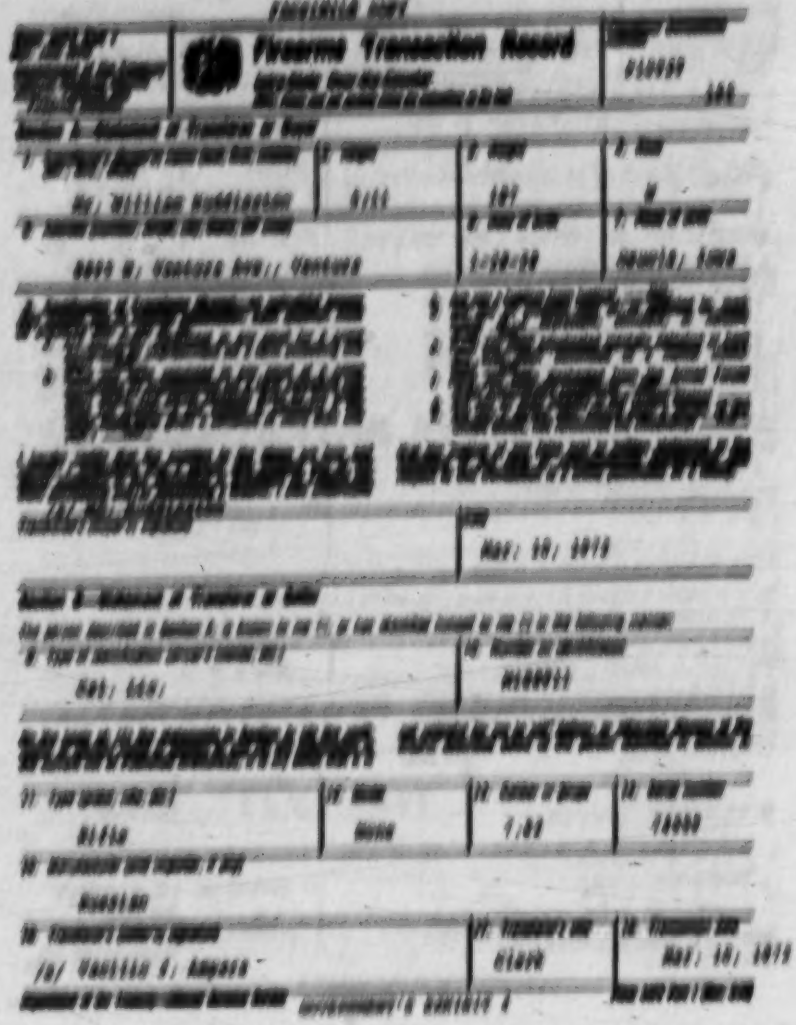
Black

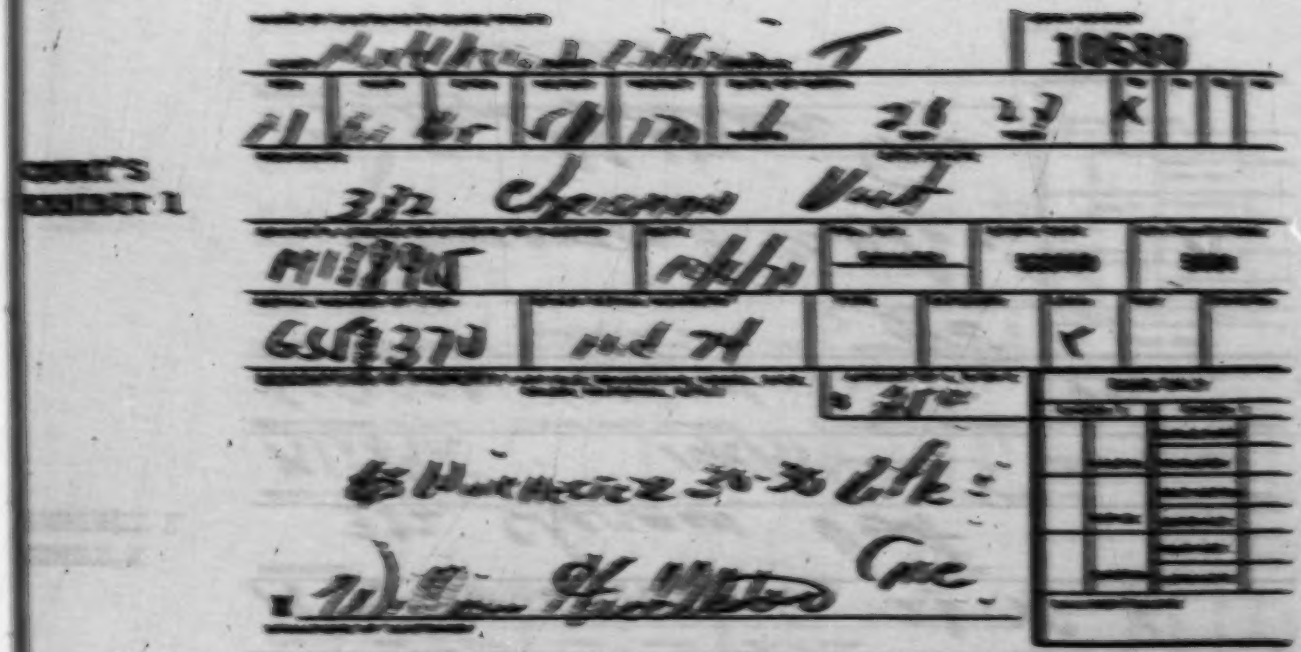
May. 10, 1973

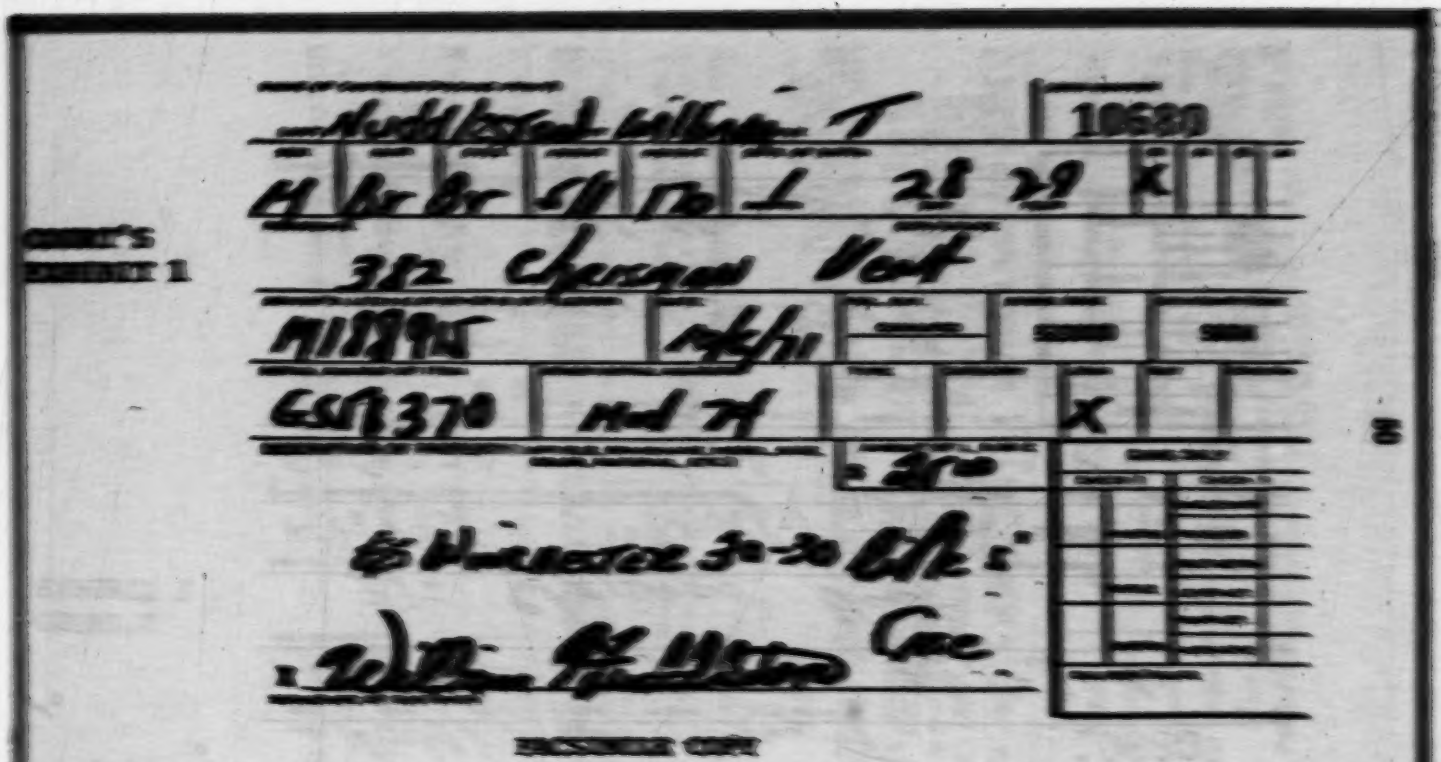
GOVERNMENT'S EXHIBIT 5



GOVERNMENT'S EXHIBIT 4







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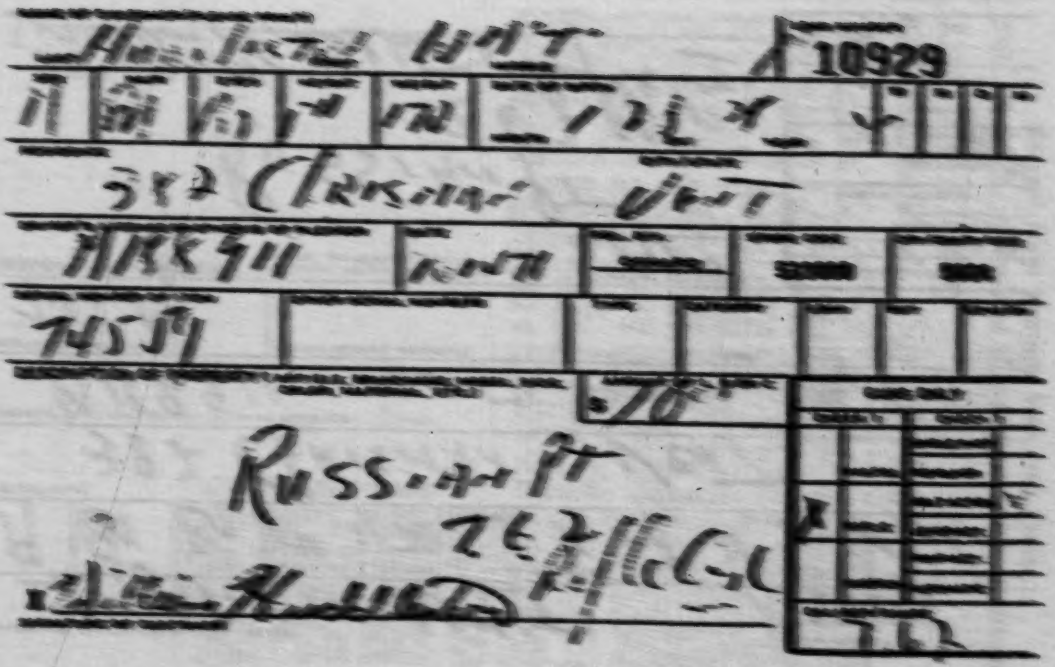
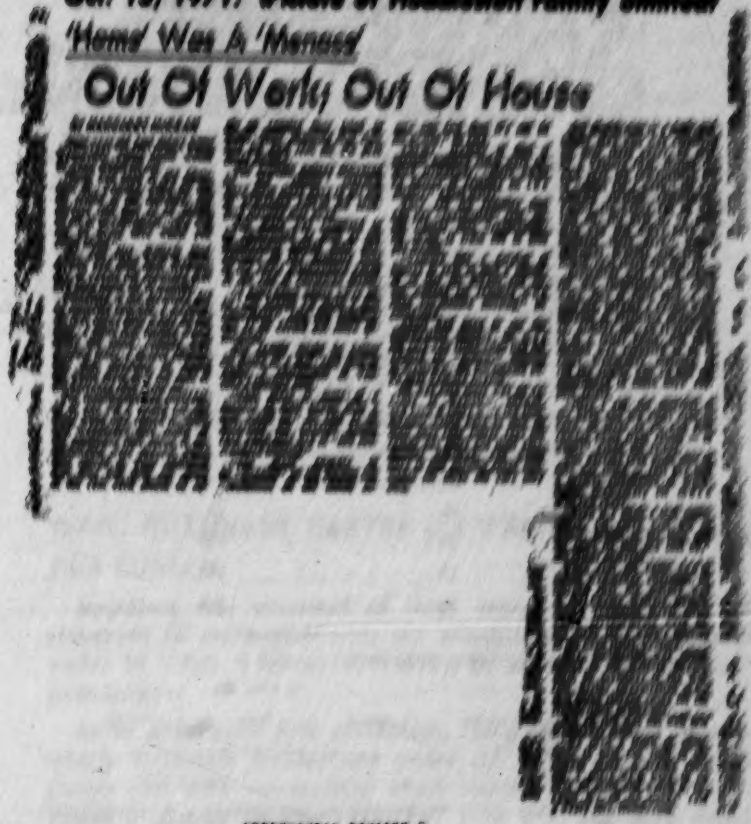
COURT'S EXHIBIT 3



Excerpt from Ventura Star Free Press
Oct. 13, 1971. (Picture of Huddleston family omitted)

'Home' Was A 'Menace'

Out Of Work; Out Of House



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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	Plaintiff-Appellee,	No. 72-2170
vs.		
WILLIAM G. HUGHLETON,	Defendant-Appellant.	

(January 8, 1973)

Appeal from the United States District Court
Central District of California

Before: CHAMBERS, CARTER and WRIGHT, Circuit Judges.

PER CURIAM:

Appellant was convicted of three counts of making a false statement in connection with the acquisition of three firearms, under 18 U.S.C. § 922(a)(6) (1970), by redeeming them from a pawnbroker.

As to appellant's first contention, Congress intended to reach wholly intrastate transactions under the Firearms Act, on the theory that such transactions affect interstate commerce. United States v. Nenna (9 Cir. 1971) 451 F.2d 882, 884, cert. denied, 405 U.S. 988 (1972). We hold that the statute is constitutional.

Appellant next claims that the statutory term "acquisition" was not meant to reach redemption of firearms from a pawnbroker, and that its plain meaning is not broad enough to do so, citing the factually similar case of United States v. Leisure (8 Cir. 1971) 466 F.2d 709, 711-12. We decline to follow that case.

We hold that the term "acquisition" in 18 U.S.C. § 922(a)(6), when read together with the ensuing language prohibiting false statements "with respect to any fact material to the lawfulness

of the sale or other disposition of such firearm," clearly and unambiguously defines an offense. The terms "acquisition" and "other disposition" are clearly correlatives. United States v. Beebe (10 Cir. 1972) 467 F.2d 292, 294.

The statutes were meant to and did prohibit false statements in connection with the redemption of firearms from a pawnbroker, who is a "dealer" under 18 U.S.C. § 921(a)(11)(C).

Appellant's other contentions have been considered, and they are without merit.

The judgment is affirmed.

CHAMBERS, Circuit Judge, concurring and dissenting:

I concur that the statute is constitutional as applied.

But what Huddleston did was conspire. I do not believe that "conspire" is necessarily included within "acquire." That seems to be a little too broad when we construe a criminal statute.

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Office of the Clerk
United States Court of Appeals for the Ninth Circuit
[illegible]
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San Francisco, California 94101

Re: No. 72-2779 USA vs. WILLIAM G. HUDDLESTON

RECEIVED
JAN 10 1973
M. L. B.

Dear Sir:

An opinion in the above case was filed today, and pursuant to Rule 36 of the Federal Rules of Appellate Procedure a judgment was entered today:

Affirmed.

this judgment or order of the court below (or administrative agency);

Pursuant to Rule 41(a) the mandate of this court will issue 21 days after the entry of judgment, unless the court enters an order otherwise. If a stay of the mandate or a petition for rehearing is filed, if a petition for rehearing is filed and denied, the mandate shall issue 7 days after the entry of the order denying the petition.

Very truly yours,

[illegible]
Clerk of Court

[redacted]

No. 75-1076

In the Supreme Court of the United States

[redacted]

[redacted]

v.

[redacted]

[redacted]

BRIEF FOR THE UNITED STATES IN OPPOSITION

[redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1076

WILLIAM C. HUDDLESTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 8, 1973. The petition for a writ of certiorari was filed on February 5, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether 18 U.S.C. 922(a)(6), which proscribes the making of false statements in connection with the "acquisition" of a firearm, covers the redemption of a firearm from a pawnshop.

STATUTE INVOLVED

18 U.S.C. 922(a)(6):

(a) It shall be unlawful—

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

STATEMENT

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of three counts of making a false statement in connection with the acquisition of firearms, in violation of 18 U.S.C. 922(a)(6). He was sentenced to concurrent three year prison terms, all but twenty days (on weekends) being suspended, and was placed on probation for five years.

The evidence showed that petitioner pawned three rifles at a local pawnshop and sought to redeem them a few months later. In redeeming the weapons, petitioner was required by the proprietor to fill out a Department of Treasury "Firearms Transaction Record" (Form 4473) for each of the three rifles (see, e.g., Pet. App. 4). On each of these forms he

falsely answered question "21" which asked if he had ever been convicted of a crime punishable by more than one year's imprisonment.[1] He also signed on each form a statement certifying all responses to be true (Exhibits 2, 3, 4; Tr. 72, 93). In truth, petitioner had previously been convicted under California law of a felony (writing checks without sufficient funds) punishable by a maximum term of fourteen years' imprisonment, although he actually served only thirty days in jail. This fact, if revealed to the store proprietor, would have precluded him from transferring the weapons to petitioner. Section 922(d) makes it unlawful for any dealer (including a pawnbroker) "to sell or otherwise dispose of any firearm" to one known to have been so convicted.

A government agent testified that, when petitioner was questioned as to his incorrect responses he admitted that he had known when filling out the form that he was a felon and that his answer was untrue, but that he considered it unimportant because he was redeeming and not purchasing the weapons (Tr. 72). Petitioner testified at trial that he was aware that he could have been imprisoned for more than one year on the earlier felony conviction and explained his incorrect response by claiming that he had not read the form but had merely filled it in as directed by the pawnbroker (Tr. 149–151).

---

[1] Question "21" cautions the respondent that "The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year."

ARGUMENT

1. Petitioner contends that the prohibition in 18 U.S.C. 922(a)(6) against making false statements in connection with the "acquisition" of a firearm should be read as not covering the redemption of a firearm from a pawnshop by the original owner of the weapon. We submit that such a restrictive interpretation of Section 922(a)(6) would be inconsistent with the language of Section 922(a)(6) and related sections of the Gun Control Act, as well as the intent of Congress in enacting the statute.

Section 922(a)(6) prohibits false statements made "in connection with the acquisition or attempted acquisition of any firearm" if such statement is material "to the lawfulness of the sale *or other disposition* of such firearm" under other provisions of the Act (*emphasis added*). That language seems on its face to cover any and all transfers of firearms to recipients. Moreover other sections of Title IV similarly speak in terms broadly encompassing any disposition of firearms, rather than merely formal sales. Section 922 (a)(1) prohibits all but licensed persons from "dealing in firearms or ammunition." Section 922(b)(1) forbids such licensed individuals "to sell or deliver" firearms to juveniles. Section 922(b)(2) makes it a crime for dealers "to sell or deliver" weapons to persons in any state where "at the place of sale,

*delivery or other disposition" such transfer would violate local law. Section 922(d) provides that arms dealers may not "sell or otherwise dispose" of any firearm to convicted criminals or narcotic addicts. Finally, Section 922(g) requires all weapons dealers to maintain "records of importation, production, shipment, receipt, sale or other disposition, of firearms * * *" (emphasis added). With the statute so obviously comprising a comprehensive regulatory scheme for all types of firearms disposition, we submit that it would be contrary to the legislative intent to restrict the enforcement of one section of the law to a more narrow compass.*

*The text and legislative history of Title IV of the Gun Control Act is also contrary to petitioner's argument. Pawnbrokers were specifically included within the definition of "dealers" (Section 921(a)(11), (12)) so as to include their activities within the range of the statute's regulation. See S. Rep. No. 1097, 90th Cong., 2d Sess., pp. 111–112. Indeed, given the definition of pawnbroker in Section 921(a)(12) as one "whose business * * * includes the taking or receiving, by way of pledge or pawn, or any firearm * * * as security for the payment or repayment of money," it is incongruous to argue that Congress overlooked the redemption situation and thus did not intend the term "acquisition" in Section 922(a)(6) to cover redemptions. Similarly, Congress enumerated a variety of exemptions from the provisions of Title IV (see Sections*

922(a)(2) and 925); yet, while Section 921(a)(12) obviously demonstrates a cognizance of the redemption situation, such a pawn transaction is not among these exemptions.

Congress also manifested a variety of motives in enacting Title IV, which support a reading of the term "acquisition" in Section 922(a)(6) to encompass redemption. Most apparent was the desire by Congress to prevent those convicted of serious crimes from possessing firearms that might subsequently be utilized in further criminal enterprises. See S. Rep. No. 1097, *supra*, 108. This goal is enhanced by preventing such criminals from regaining weapons once placed in the market place.[9] By providing that a form be filled out

---

[9] This legislative history is a sufficient answer to petitioner's claims that "since most states and cities already require pawnshops to keep full and accurate records with regard to persons who pawn items," federal coverage is superfluous, and that the application of Section 922 to cases such as this, (1) conflicts with the intent of Congress by "in effect, forcibly registering guns presently owned or owned before the enactment of the 1968 laws" (Pet. 910), (2) constitutes "an unreasonably broad method to prevent guns [from] coming into the hands of the wrong persons" (Pet. 10-11), and (3) operates to "confiscate" weapons by effectively making it impossible for convicted felons to maintain them from pawnbrokers. Congress obviously was not only concerned with record keeping or gun registration, but with keeping weapons out of the hands of convicted felons (18 U.S.C. 922(d); 18 U.S.C. App. 1202(a)). There is no dispute that had petitioner truthfully answered the questionnaire it would have been unlawful for the pawnbroker to have delivered the weapon to him (18 U.S.C. 922(d)). Moreover, petitioner's receipt of the three weapons, at least one of which (Pet. App. B) "has previously traveled in interstate commerce," would

by all who acquire firearms from dealers, Congress also intended to expand the ability of law enforcement agencies to trace stolen weapons and those used in furtherance of criminal acts. See S. Rep. No. 1097, *supra*, at 203. Thus, by requiring recordation even of redemption transactions, a more expansive file of firearms is available for law enforcement officers. Finally, Title IV was also intended to provide assistance to local law enforcement agencies, and thus Section 923(g) provides that information obtained by federal agencies under the auspices of the act should be made available under the agencies. S. Rep. No. 1097, *supra*, at 28, 81, 117. Here, again, a more expansive firearms file would enhance this purpose.

Petitioner's claim that Congress has no power to regulate transactions such as that at issue here—because "the likelihood that the pawnor's firearm has been in commerce in the recent past is highly speculative" (Pet. 12–13)—overlooks the well settled principle that "[w]here the class of activities is regulated and that class is within the reach of federal power, the courts have no power to 'excise, as trivial, individual instances' of the class" (*Perez* v. *United States*, 402

---

be sufficient to constitute a violation of 18 U.S.C. App. 1202(a), (*United States* v. *Bass*, 404 U.S. 336, 350). Section 1202(a) makes it an offense for "[a]ny person" who has a prior felony conviction to receive any firearm "in commerce or affecting commerce." It is thus clear that whatever Congress may have intended regarding "confiscation" of weapons from "law abiding citizens" (P.L. 90-351, Section 901(a), 82 Stat. 225), the adoption of 18 U.S.C. App. 1202(a) and 18 U.S.C. 922(d) makes it clear that Congress established a variety of mechanisms to keep guns away from convicted felons.

U.S. 146, 154). Petitioner does not dispute that the "class of activities" here at issue—the acquisition of firearms by convicted felons from commercial establishments—"is within the reach of federal power."[*] Congress has expressly found (18 U.S.C. App. 1201) that "the receipt, possession, or transportation of a firearm by felons" and other specified persons constitutes:

> (1) a burden on commerce or threat affecting the free flow of commerce,
>
> (2) a threat to the safety of the President of the United States and Vice President of the United States,
>
> (3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and
>
> (4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

In light of these findings, the fact that in a given case a person may receive a weapon, which "has not been in commerce in the recent past" (Pet. 12–13),

---

[*] *See United States v. Crandall*, 453 F. 2d 1216, 1217 (C.A. 1); *United States v. O'Neill*, 467 F. 2d 1372, 1373–1374 (C.A. 2); *United States v. Hudson*, 460 F. 2d 1262, 1263 (C.A. 4), certiorari denied, 409 U.S. 872; *United States v. Nelson*, 458 F. 2d 556, 559 (C.A. 5); *United States v. Garner*, 465 F. 2d 265, 267 (C.A. 7); *Cody v. United States*, 460 F. 2d 34 (C.A. 8); *United States v. Menna*, 451 F. 2d 982 (C.A. 9), certiorari denied, 405 U.S. 961.

cannot affect the validity of the reasonable regulatory scheme here at issue.[4]

2. While the holding of the court of appeals here is consistent with a similar decision of the Court of Appeals for the Tenth Circuit (*United States* v. *Beebe*, 467 F. 2d 222, pending on petition for certiorari, No. 72-5800), the Court of Appeals for the Fifth Circuit has held to the contrary in *United States* v. *Laisure*, 460 F. 2d 709. There the court perceived an ambiguity in the language of Section 922 (a)(6) and, relying on *United States* v. *Bass*, 404 U.S. 336, invoked a rule of lenity in favor of the accused.[5] As we have shown above, a

---

[4] Contrary to petitioner's claim, the application of Section 922 here does not constitute a taking of property "without any proceeding or due process determination of whether it is actually illegal for him to possess the firearm" (Pet. 5). No such proceeding is necessary here. By expressly prohibiting the pawnbroker from delivering weapons to petitioner and other convicted felons (18 U.S.C. 922(d)), Congress has determined that such persons may not lawfully obtain them, even though the actual receipt of the weapons would not under all circumstances be a crime. (See *United States* v. *Bass*, 404 U.S. 336, 350.) Moreover, as applied here, Section 922(a) does not effect a "taking" of petitioner's property. The guns did not belong to petitioner but were the property of his wife (Tr. 9), who would have a legal right to obtain the weapons from the pawnbroker.

[5] In *Bass* the issue was whether 18 U.S.C. App. 1202(a) (Title VII of the Omnibus Crime Control and Safe Streets Act of 1968) prohibited any and all possession by a felon of a firearm or only applied to possession that somehow affected interstate commerce. There, foremost in this Court's invocation of the rule of lenity was the fact that Section 1202(a) did not give "a fair warning * * * in language that the common world will understand, of what the law intends to do if a certain line is passed." 404 U.S. at 348. Here, the statute is clear;

reading of Section 922(a)(6) and of Title IV fails to disclose any uncertainty as to the meaning of the statute, or any doubt as to its validity. Although there is thus a conflict between the circuits, we submit that the case was properly decided below and is not of sufficient consequence to warrant plenary review. This is so because if petitioner's construction of Section 922(a)(6) prevails, a person in his place could still be prosecuted for the same acts pursuant to Section 924(a), which provides:

> Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter * * * [shall be guilty of a crime].

Section 923(g) requires all firearms dealers, including pawnbrokers, to keep records, including Form 4473, of all weapons "dispositions" made by them. It can hardly be argued that a pawn redemption is not a "disposition." Accordingly, it is of little consequence whether 922(a)(6) is held to be applicable to pawn transactions.

---

answers, Form 4473 specifies twice that untruthful answers to any of the simple yes or no questions asked can result in federal prosecution.

Section 921(a) was enacted pursuant to a finding by Congress (Pub. L. 90-351, Section 901(a)(2) and 901(a)(3), 82 Stat. 225), "that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the business of importing, manufacturing, or dealing in them," can "the prevalence of lawlessness and violent crime in the United States" be "properly dealt with, and effective State and local regulation of this traffic be made possible."

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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HENRY E. PETERSEN,
Assistant Attorney General.
JEROME M. FEIT,
HOWARD PLAKUN,
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MARCH 1973.

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In the Supreme Court
OF THE
United States
October Term, 1973

No. 72-1076

William G. Hennington, Petitioner
v.
United States of America, Respondent

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR PETITIONER

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In the Supreme Court
OF THE
United States
OCTOBER TERM, 1973

No. 72-1076

WILLIAM G. HUDDLESTON, *Petitioner*
v.
UNITED STATES OF AMERICA, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

OPINION BELOW

The majority opinion of the United States Court of Appeals for the Ninth Circuit and the concurring and dissenting opinion of Chief Judge Chambers are reported at 478 F.2d 892. A copy is attached hereto as Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and under Rule 21 of the Rules of this Court.

QUESTION PRESENTED

Does the term "acquisition" in 18 U.S.C. §922(a)(6), which prohibits false statements "in connection with the acquisition . . . of any firearm," cover the redemption of a firearm from pawn by the pawnor?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. 18 U.S.C. §922(a)(6) provides:

> "(a) It shall be unlawful — — (6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;"

2. 26 C.F.R. §178.124(a) provides in part:

> "A licensed . . . dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, . . . unless he records the transaction on a firearms transaction record, Form 4473: *Provided*, That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm is returned to the person from whom received."

3. The United States Constitution, Amendment V, provides in part:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

4. The Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3 provides in part:

> "The Congress shall have Power . . . to regulate Commerce . . . among the several States . . . ."

STATEMENT OF THE CASE

On September 18, 1979, after a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of three violations of 18 U.S.C. §922(a)(6) for making material false statements in connection with the acquisition of three firearms from a licensed firearm dealer. Section 922(a)(6) is quoted in full above.

In late 1971, petitioner pawned three of his family's rifles, App. 81-88 (Testimony of Petitioner), and received loans of $10.00, $10.00, and $25.00. App. 49-54 (Court's Exhibits 1, 2 and 3).

In February and March, 1979, petitioner redeemed the three rifles from pawn. In connection with the three redemptions, petitioner was required to complete Treasury Department Form 4473, entitled "Firearms Transaction Record". App. 43-48 (Government Exhibits 2, 3, and 4). On the forms, petitioner answered "No" to Question 8b: "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?"

QUESTION PRESENTED

Does the term "acquisition" in 18 U.S.C. §922(a)(6), which prohibits false statements "in connection with the acquisition . . . of any firearm," cover the redemption of a firearm from pawn by the pawnor?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. 18 U.S.C. §922(a)(6) provides:

> "(a) It shall be unlawful — — (6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter."

2. 26 C.F.R. §178.124(a) provides in part:

> "A licensed . . . dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, . . . unless he records the transaction on a firearms transaction record, Form 4473: *Provided*, That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm is returned to the person from whom received."

3. The United States Constitution, Amendment V, provides in part:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

4. The Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3 provides in part:

> "The Congress shall have Power . . . to regulate Commerce . . . among the several States . . . ."

STATEMENT OF THE CASE

On September 13, 1972, after a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of three violations of 18 U.S.C. §922(a)(6) for making material false statements in connection with the acquisition of three firearms from a licensed firearm dealer. Section 922(a)(6) is quoted in full above.

In late 1971, petitioner pawned three of his family's rifles, App. 31-33 (Testimony of Petitioner), and received loans of $10.00, $15.00, and $25.00. App. 49-54 (Court's Exhibits 1, 2 and 3).

In February and March, 1972, petitioner redeemed the three rifles from pawn. In connection with the three redemptions, petitioner was required to complete Treasury Department Form 4473, entitled "Firearms Transaction Record" App. 43-48 (Government Exhibits 2, 3, and 4). On the forms, petitioner answered "No" to Question 8b: "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?"

This "No" answer was incorrect because six years earlier, in 1986, petitioner had been convicted in California for writing checks without sufficient funds. Although petitioner was sentenced to only 30 days in jail for this minor crime, the crime was punishable by a term exceeding one year.

Before the trial of this case, petitioner moved to dismiss the indictment on various grounds. He argued, inter alia, that §922(a)(6) requires a demonstration of an interstate commerce nexus to the alleged violation; and that the section was never intended to, and should not apply to, the redemption of a pawned rifle by the pawnor.

The Government's primary evidence consisted of the three Form 4473's signed by petitioner when he redeemed his firearms, App. 43-48 (Government Exhibits 2, 3, and 4), the record of petitioner's California conviction for writing checks without sufficient funds, and the firearms license of the pawnbroker.

Petitioner's case consisted of his testimony that he did not knowingly make a false statement by answering "No" to Question 8b on the Form 4473. He stated that he had never read the form and merely answered "No" upon instruction of the pawnshop operator who required the form to be signed as a condition of redemption. App. 85. Petitioner also testified that he was unaware that his conviction for writing checks without sufficient funds was punishable by a term exceeding one year, because he had been told by his attorney that the maximum sentence was one year. App. 87.

Upon completion of the evidence, the trial judge found petitioner guilty on all three counts. Petitioner was given a three year sentence, suspended except for the first twenty

days which were to be served on weekends. Petitioner is currently free on $1,500 third-party surety bail.

Petitioner's conviction was affirmed by the United States Court of Appeals for the Ninth Circuit over the dissent of Chief Judge Chambers.

SUMMARY OF ARGUMENT

The question before this Court is whether the term "acquisition" in 18 U.S.C. §922(a)(6), which prohibits false statements "in connection with the acquisition . . . of any firearm" covers the *redemption* of a firearm from pawn by the pawnor. Petitioner contends that the language and legislative history of the statute, the policy considerations underlying it, and the existence of comprehensive schemes of state and local regulation of the subject matter all indicate that Congress did not intend to cover pawn redemptions by use of the term "acquisition" in §922(a)(6). Furthermore, even if that were the intention of Congress, the expression of that intention is so ambiguous and lacking in clarity as to require application of the well-established rule favoring narrow construction of criminal statutes. Finally, petitioner contends that serious constitutional problems would arise if the redemption from pawn were held to be an acquisition; therefore, the statute should be narrowly construed to avoid the resolution of such issues.

ARGUMENT

THE TERM "ACQUISITION" IN 18 U.S.C. §922(a)(6), WHICH PROHIBITS FALSE STATEMENTS "IN CONNECTION WITH THE ACQUISITION OF ANY FIREARM", DOES NOT COVER THE *REDEMPTION* OF A FIREARM FROM PAWN BY THE PAWNOR.

A. The Language And Legislative History Of The Statute, The Policy Considerations Underlying It, And The Existence Of Comprehensive Schemes Of State And Local Regulation Of The Subject Matter Indicate That Congress Did Not Intend To Cover Pawn Redemptions By Use Of The Term "Acquisition" In §922(a)(6).

Petitioner's conviction was not simply for making a false statement in the abstract on some government forms. Such an act might constitute a violation of another statute, such as 18 U.S.C. §1001. Rather, petitioner was convicted for giving false statements "in connection with the acquisition" of three rifles, under §922(a)(6) of Title 18, United States Code. Therefore, the question before this Court is not whether petitioner's statements were true or false, but whether the statements were made "in connection with the acquisition" of a firearm under §922(a)(6).

The resolution of this question requires some understanding of the nature of a pawn transaction. A pawn transaction is a temporary bailment of personal property to secure a loan. It is merely an interruption in the pawnor's possession of the property. See California Financial Code §21201; *Jackson v. Shawl*, 29 Cal. 267 (1865). See generally 70 *C.J.S.*, "Pawnbrokers", §1; 54 *Am. Jur.2d*, "Money Lenders and Pawnbrokers", §1. *There is no change in legal title when the pawnor pawns the firearm or when he redeems it from pawn by paying back the loan. The pawnshop has only a security interest in the pledged property of the pawnor. Indeed, even in the event of default, there may not be a change in title or ownership until the pawnshop sells the pledged property to a third party.* Compare Uniform Commercial Code §§9-207, 9-506, with California Financial Code §21201.

In sum, the normal pawn-plus-redemption transaction is merely an interruption in the possession of the pawnor. When the pawnor returns to redeem the property pledged

as security, he merely repossesses his own property. The redemption from pawn merely restores the status-quo that existed before the pawn.

Despite the above-described realities and legalities of the pawn transaction, the Government has adopted the position that a pawn redemption is comprehended by the term "acquisition" in §922(a)(6) of Title 18. The Treasury Department requires licensed firearms dealers to complete Treasury Form 4473 before the sale or disposition of any firearm[1]; and the Department has taken the position — apparently informally and without any specific regulation[2] — that Treasury Form 4473 must be completed before a pawnbroker can allow the pawnor to redeem his pledged firearm. A copy of the front and back of Form 4473 is included herein as Appendix B. Unless the pawnor completes this Form 4473 in writing, and unless all of his responses to the several questions are in the negative, the Government insists that the pawnor cannot repossess his property[3], and that was the understanding of the pawnbroker in this case. App. 20-21 (Testimony of Pawnshop Owner).

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[1] 26 C.F.R. §178.124 is quoted, in part, on page 2 supra.

[2] See Question and Answer No. 34 in, "Questions and Answers Relative to the Gun Control Act of 1968," contained in Publication No. 603 of the Treasury Department at 41 (1972 ed.), which states as follows:

> "Is a pawnbroker required to obtain a Form 4473 when the person who pawned a gun redeems it? Yes. The pawnbroker is a firearms dealer and subject to all recordkeeping requirements. The Form 4473 on each firearm transaction protects him by requiring the redeemer to certify that he is not prohibited from receiving such firearm."

[3] See the Brief For The United States In Opposition To Petition For a Writ of Certiorari in this case (hereafter Government Petition Brief), where the Government states as follows, page 6, n. 2:

> "There is no dispute that had petitioner truthfully answered the questionnaire it would have been unlawful for the pawnbroker to have delivered the weapon to him (18 U.S.C. 922 (d))."

In the present case, petitioner on three separate occasions deposited a family rifle at Saul's Loan and Jewelry Company as security for a loan. See App. 32-33. Within the times prescribed for redemption, he returned to Saul's, repaid the loans, and repossessed each rifle. On each occasion, before receiving his firearm back, he was required to complete a Form 4473. It was on these forms that petitioner made the incorrect statements regarding his prior conviction for writing checks with insufficient funds.

Although the statements on the three Forms 4473 were incorrect, the fact remains that the relationship between petitioner and the pawnbroker was that of bailor-bailee, and petitioner retained not only title but a right of redemption in the firearms. In other words, petitioner could not have "acquired" any title or interest in the rifles, because he had never previously relinquished them. At most, petitioner "reacquired" physical possession of firearms to which he was entitled by virtue of the contract between him and the pawnshop. As Chief Judge Chambers stated in dissent in this case, "what Huddleston did was reacquire. I do not believe that 'reacquire' is necessarily included within 'acquire'." 472 F.2d at 503.

That Congress did not intend the term "acquisition" to include a mere repossession of this kind is apparent from the several indicia of legislative intent surrounding §922 (a)(6).

First, the legislative history behind Title IV of the Omnibus Crime Control Act of 1968[4] and Title I of the Gun Control Act of 1968,[5] from which §922(a)(6) was derived, shows that the congressional concern in passing that sec-

[4] Pub. L. No. 90-351.

[5] Pub. L. No. 90-618.

tion was focused on *sales* of firearms. As stated in Senate Report No. 1097, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News 2112, 2203:

> "This paragraph [922(a)(6)] prohibits the making of false statements or the use of any deceitful practice (both knowingly) by a person in connection with the acquisition or attempted acquisition of a firearm from a licensee. To invoke the prohibition, the false statement or deceitful practice must be material to the lawfulness of the *sale* of the firearm under the provisions of the title." (Emphasis added.)

Similarly, the Senate's general explanation of the "record-keeping provisions" of Title IV, of which §922(a)(6) is a part, also uses words indicating a focus on sales:[8]

> "The title would place more emphasis on the recordkeeping responsibilities of licensees by requiring that the licensee record identifying information submitted to him by the *purchaser*, and by specifically providing for the inspection of records by the Treasury Department." (Emphasis added.)[9]

The legislative history of Title I of the Gun Control Act of 1968, which strengthened Title IV of the Omnibus Crime Control Act of 1968, notably by adding rifles to the cover-

[8] 1968 U.S. Code Cong. & Admin. News at 2168.

[9] Even Senator Pong, who believed Title IV was too weak, indicates in his report on the bill that the law was generally limited to "sales." See 1968 U.S. Code Cong. & Admin. News 2238, 2243:

> [10]As approved by the committee, title IV contains the following provisions:
>
> * * * *
>
> "(4) Prohibits a Federal dealer from selling a firearm to a person who the licensee believes is prohibited by State or local law from receiving or possessing a firearm (Rifles and shotguns are included in the definition of 'firearm'.)" (Emphasis added.)

age of the law, also indicates that §922(a)(6) was aimed at sales. As stated in House Report No. 1577, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News, 4410, 4413:

> "The subject legislation responds to widespread national concern that existing Federal control over the sale and shipment of firearms [across] State lines is grossly inadequate." (Emphasis added.)

And again this same House Report uses the term sale in explaining §922(a)(6)[5]

> "This paragraph [§922(a)(6)] prohibits the making of false statements or the use of any deceitful practice (both knowingly) by a person in connection with the acquisition or attempted acquisition of a firearm or ammunition from a licensee. To invoke the prohibition, the false statement or deceitful practice must be material to the lawfulness of the sale of the firearm or ammunition under the provisions of the chapter." (Emphasis added.)[6]

In short, the legislative history of Title IV of the Omnibus Crime Control Act of 1968 and the Gun Control Act of 1968 indicates that §922(a)(6) was aimed at sales.

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[5] 1968 U.S. Code Cong. & Admin. News at 4419.

[6] It should be pointed out that the Government's own indictment in this case recognizes this Congressional intent by using the word "sale". For example, Count One states as follows, App. 1:

> "On or about February 11, 1972, in the Central District of California, defendant WILLIAM CARROLL HUDDLESTON, in connection with the acquisition of a firearm from a licensed dealer in firearms, willfully and knowingly made a false and fictitious statement, likely to deceive such dealer with respect to a material fact as to the lawfulness of the sale of such firearm pursuant to Chapter 44, Title 18, United States Code . . ." (Emphasis added.)

Second, the legislative intent to exclude a pawn redemption from "acquisition" in §922(a)(6) is further indicated by the legislative history of the two 1968 laws regarding confiscation of lawfully owned firearms. As stated in Conference Report No. 1956, 90th Cong., 2nd Sess., 1968 U.S. Code Cong. & Admin. News 4426, 4433: "[I]t is intended that the Act not be construed to authorize the confiscation of lawfully possessed firearms." Yet a form of confiscation is precisely what results when a person, even though legally entitled to possession of his redeemed firearm, either responds in the affirmative to any question on Form 4473 or cannot complete Form 4473. In that event, the pawnbroker is prohibited by 18 U.S.C. §922 (d) and 26 C.F.R. §178.124 from returning the firearm to the pawnor. This confiscation by the pawnbroker (under government direction) bears no relation to, and indeed represents a circumvention of, the elaborate seizure and forfeiture procedures mandated by Congress in the Gun Control Act of 1968. See 18 U.S.C. §924(d) and 26 U.S.C. §5872.

The possibility of improper confiscation results from the fact that there is no invariable correlation between an affirmative answer on Form 4473 (or a failure to complete Form 4473) and the right of the would-be recipient to possess the firearm. For example, in United States v. Bass, 404 U.S. 336 (1971), this Court held that some nexus to interstate commerce must be proved as an element of the offense in a prosecution for illegal firearm possession under 18 U.S.C. App. §1202(a). Thus, a person may be legally entitled to possess a firearm, both under governing state law and federal law (because no interstate commerce nexus could be proved), and yet, the person's firearm would be retained by a pawnbroker if the person answered "yes" to one of the complex questions on Form 4473.

Third, a legislative intent to exclude pawn redemptions from §922(x)(5) is also indicated by Congress's rejection in Title IV of the Omnibus Crime Control Act of the concept of registration of firearms lawfully owned at that time. The legislative history provides consistent evidence of a general congressional intent to limit federal governmental screening of firearms to prospective firearm ownership." Senate Report No. 1097, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News (Additional Views of Senator Tydings) 2112, 2167 states:

> "[The law] does not provide for registration of any firearm or require any permit for purchase of firearms." (Emphasis original.)

However, by requiring completion of a Form 4473 upon redemption by the pawner, the Treasury Department is, in effect, forcibly registering those firearms owned prior to the enactment of the 1968 laws. If and when a pawner redeems his firearm from a pawnshop, that firearm will be effectively registered if the Government's position is sustained. This registration is inconsistent with the intent of the two 1968 laws, and is contrary to prevailing state and local practice in the overwhelming majority of jurisdictions. According to the National Commission on the Causes and Prevention of Violence, Staff Report, Firearms and Violence in American Life, at 90: "[O]nly the District of Columbia appears to have supplemented its licensing law by requiring, when the law became effective, that all firearms already in circulation be registered."

"While Title II of the Crime Control Act of 1968, Pub. L. No. 90-618, added some very limited registration requirements for certain types of very dangerous weapons, 26 U.S.C. §§5801 and 5841, the law avoided any registration requirements for the normal kinds of rifles involved here, provided they were at that time owned in a private, non-commercial capacity. The law also added very little to §922(x)(5), except for the inclusion of ammunition and licensed collectors.

Fourth, an additional congressional directive contained within Chapter 44 provides textual support for petitioner's position. That directive, 18 U.S.C. §922(a)(2)(A), framed as an exemption, states:

"(a) It shall be unlawful . . .

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a . . . licensed dealer . . . from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing." (Emphasis added.)

Similarly the implementing administrative regulations issued by the Treasury Department provide that a Form 4473 need not be completed in the event that a firearm is returned to any person who had previously left it with any licensee for purposes of repair. 26 C.F.R. §178.124(a) states:

"A licensed . . . dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, . . . unless he records the transaction on a firearms transaction rec-

ord, Form 4473: Provided, That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm is returned to the person from whom received." (Emphasis added.)

A pawn redemption is analogous to the return to the original owner after replacement, repair, or customization. In a pawn redemption, as in the cases of replacement, repair, or customization, the returning of the firearms to a specific individual represents a mere restoration of the status quo.

Fifth, and finally, congressional intent to exclude pawn redemptions from the scope of §922(a)(6) is supported by the fact that, as a matter of policy, coverage of the pawn redemption is not a necessary enforcement device. The Government contends that the inclusion of pawn redemptions within §922(a)(6) is a necessary enforcement device to prevent improper persons, such as felons, from possessing firearms. However, the necessity of an additional enforcement aid is highly speculative. Other federal, state, and local laws require the keeping of sufficient records to allow federal or state authorities easily to identify and prosecute illegal possessors.

Numerous state and local laws regulate pawnbrokers and require full and accurate records with respect to pawnors and the items they pledge as security. Such records are generally subject to inspection by local police authorities. See, e.g., Annot., "Validity of Statutes or Ordinances Which Impose Duties Upon Pawnbrokers As Regards Identity of Persons With Whom They Deal or Other Means of Enforcing Criminal Law Against Theft", 135 A.L.R. 1168; California Financial Code §§21202, 21206. A complete

analysis of the various state and local laws is contained in Appendix C.

Indeed, the pawn forms completed by the petitioner in this case, App. 49-54 (Court's Exhibits 1, 2, and 3), contain sufficient information to have allowed any law enforcement agency to arrest and prosecute petitioner for illegal firearm possession. These forms, for example, identified petitioner by name, address, sex, hair color, eye color, weight, height, age, and drivers license number. They also identified in detail the firearms pawned.

Federal regulations issued under the 1968 federal firearm control laws also require all licensed dealers (including pawnbrokers) to maintain records of their firearm inventory and their receipt of firearms. 26 C.F.R. §178.125(e). These records afford the Treasury Department effective access to a documentation of the initial pawn transaction that would provide the information needed for prosecution if the pawnor's possession were illegal. See *McLemore v. United States Treasury Department*, 317 F. Supp. 1077 (N.D. Fla. 1970).[11]

In addition, the Federal Truth-In-Lending Act, 15 U.S.C. §§1601 et seq., requires pawnshops to keep transaction records that would seem to permit the identification and prosecution of illegal firearm possessors. Section 129 of the Act, 15 U.S.C. §1639, requires a description of the security for loans. Various sections of Federal Reserve Board Regulation Z, 12 C.F.R. §§226 et seq., as well as section 181 of the Act, 15 U.S.C. §1641, require or necessitate the identification and acknowledgement of the debtor. See also the model forms for disclosure prepared by the Federal Reserve Board, CCH Consumer Credit Guide §3855. And

[11] Petitioner, of course, takes exception to those portions of 26 C.F.R. §178.125(e) that would by implication require a pawnor to complete Form 4473 upon redemption of the firearm.

12 C.F.R. §226.8(i) requires the retention and the disclosure to federal authorities by the creditor of all loan documents evidencing compliance with Regulation Z and the Truth-In-Lending Act. Finally, by a letter of July 17, 1969, from the Federal Reserve Board, by Assistant Secretary Robert F. Forrestal, the Board made it clear that it considered pawnbrokers to be covered by the Act. See CCH Consumer Credit Guide ¶30,101. Thus, the Federal Government should already have sufficient access to complete records of pawn transactions.

In summary, the legislative history and the context of §922(a)(6) evidence a Congressional intention to limit the scope of the term "acquisition" so as to exclude transactions, like pawn redemptions, where possession is merely interrupted. Moreover, there is no justification in policy or otherwise to warrant extending §922(a)(6) to pawn redemptions.

B. Even If Congress Might Have Intended The Term "Acquisition" In 18 U.S.C. §922(a)(6) To Cover Pawn Redemptions, The Expression Of That Intention Is So Ambiguous And Lacking In Clarity As To Require The Application Of The Well-Established Rule Favoring Narrow Construction Of Criminal Statutes.

Even if the legislative intention to *exclude* pawn redemptions from "acquisitions" under §922(a)(6) were not manifest, the intention to *include* pawn redemptions is so ambiguous and uncertain as to require the application of the well-established rule favoring the narrow construction of criminal statute. See, e.g., *Lewis v. United States*, 401 U.S. 808 (1971). Neither the term "pawn redemption" nor the term "repossession" appears in §922(a)(6). Nor is the term "acquisition" defined in §922(a)(6) or elsewhere in Chapter 44 of Title 18.[4]

[4] It is significant to note that Section 921 does define twenty other terms used in Chapter 44.

Section 922(a)(6) requires that the false statement be "likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the *sale or other disposition* of such firearms." (Emphasis added.) The Court below found that the language "sale or other disposition" clarified the term "acquisition" so as to expand the term "acquisition" to include pawn redemptions. To the contrary, petitioner believes that reference to these additional terms does not clarify the term "acquisition", but only compounds its ambiguity. Obviously, the term "sale" in §922(a)(6) does not indicate that "acquisition" includes pawn redemption. It only confirms petitioner's contention that the term acquisition should be limited to sales or purchases. And the term "or other disposition" is no clearer than the term "acquisition" itself, and like "acquisition" is nowhere defined in Chapter 44. Even if the term "or other disposition" were intended somehow to expand "acquisition", it is a very tenous expression of such an intention of Congress.

One thing that is clear is that Congress was aware of the pawn situation. When Congress deemed it necessary to legislate with respect to a pawn transaction, it did so *specifically*, as in the case of the prohibition of §922(j):

> "It shall be unlawful for any person to receive, conceal, store, barter, *sell*, or *dispose of* any stolen firearm or stolen ammunition, or *pledge or accept as security for a loan* any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen." (Emphasis added.)

It should also be noted that Congress in §922(j) dealt with pledges as a separate category apart from *sales or disposi-*

tions. This fact casts further doubt on the meaning of these terms and their application to the pawn situation.

Given the uncertainty of meaning of the term "acquisition", the extension of §922(a)(6) to include pawn redemptions should not be made without some indication in the legislative history, or elsewhere, that that was in fact the intention of Congress. Yet, there is none — not a single reference in congressional documents indicating that the repossession of previously held firearms constituted an evil with which Congress was concerned in the promulgation of this section. In the absence of any evidence of such congressional intention, the well-settled rule favoring narrow construction of criminal statutes should apply.

This was the rationale used by the United States Court of Appeals for the Fifth Circuit in *United States v. Laisure*, 460 F.2d 709 (C.A. 5 1972). The facts in *Laisure* were virtually identical to the facts in the instant case. Laisure pawned certain guns at a pawnshop as security for a loan. He timely redeemed these same guns. He was required as a condition of the redemption to fill out Form 4473. Laisure, like petitioner, had a prior conviction, and answered "No" to the question on Form 4473 as to prior convictions.

In *Laisure*, the Fifth Circuit, in a unanimous decision, correctly held that the redemption of a pawned firearm by the pawnor was not an "acquisition" within §922(a)(6), and, therefore, Laisure could not be convicted of giving a false answer on a Form 4473 in redeeming his firearm from pawn. As stated by the Court, *supra*, at 710, 711, 712:

> "We hold that such a redemption does not constitute an 'acquisition' and therefore reverse Donald Lee Laisure, Sr.'s conviction of a violation of Section 922(a)(6).

* * * *

"We reach the opinion that when Congress enacted Section 922(a)(6), it did not seek to extend the coverage of that section to the redemption of a firearm by its owner from a licensed dealer-pawnbroker. In so ruling, we are aware of the language appearing in Section 922(d)(1) forbidding licensed dealers 'to sell or otherwise dispose of any firearm or ammunition' to convicted felons. It is entirely plausible that a redemption of a pledged firearm constitutes an 'other disposition' within the purview of that section. We find ambiguity in the statute because it refers in Section 922(a)(6) to an 'acquisition or attempted acquisition' in proscribing the conduct of the acquiring party, while speaking at the same time in Section 922(d)(1) in terms of a 'sale or other disposition' from the perspective of the licensed dealer.

. . . .

"As did the Supreme Court in *Bass*, *supra*, we feel compelled to resolve such a statutory ambiguity in favor of the defendant-appellant. The statute may not be applied to facts such as are here presented."

The *Bass* rationale of narrow construction was also the basis for an analogous decision by the Eighth Circuit interpreting §922(a)(6) in a different context. See *United States v. Hansel*, 474 F.2d 1120 (C.A. 8 1973).[11]

[11] The indictment in *Hansel* charged in part a violation of §922(a)(6), because Hansel, in response to Question 8(e) on Firearms Form 4473, falsely certified that he had not been adjudicated a mental defective and that he had never been committed to a mental institution. The Eighth Circuit held "that the term 'mental defective,' as used in the Gun Control Act does not include mental illness." The Court explained its decision as follows, 474 F.2d at 1123, 1125:

"The Gun Control Act itself does not define the term 'mental defective'. The parties have not suggested any legislative history which would illuminate this point, and we have found nothing in the committee reports or debates which is helpful.

Because the legislative history and the statute do not clearly indicate that pawn redemption was to be included as an acquisition, petitioner contends that the holding of *United States v. Laisure* should be followed. As Chief Judge Chambers pointed out in his dissenting opinion in this case, the term "acquisition" in §922(a)(6) of Title 18 is not sufficiently clear to justify broadening it to encompass a pawnor's redemption of a firearm from pawn. Therefore, in light of the settled rule that a criminal statute must be narrowly construed, the term "acquisition" should not be construed to encompass redemptions from pawn.

C. Serious Constitutional Questions Would Arise If Redemption From Pawn Were Held To Be An Acquisition Under § 922(a)(6)

It is a well-settled rule of statutory construction that Acts of Congress should be interpreted so as to avoid serious constitutional questions. See, e.g., *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 348 (1936) (Justice Brandeis concurring); *Crowell v. Benson*, 285 U.S. 22, 62 (1932); *Lucas v. Alexander*, 279 U.S. 573, 577 (1929). The application of § 922(a)(6) to the redemption of a firearm by the pawnor raises three substantial constitutional questions.

1. Due Process Considerations

A person who returns to a pawnshop to redeem his firearm is faced with the following dilemma when asked to complete Form 4473 as a condition to the redemption. He

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*"Thus, we are left to ourselves to determine the meaning of the term 'mental defective,' * * * without any revealing guides as to the intent of Congress. In these circumstances we should follow the familiar rule that criminal statutes are to be strictly construed, and give to '[mental defective]' its narrow meaning . . . ."*

* * * *

has three choices: (1) complete the form by answering yes to one of the questions, lose his firearm, and risk prosecution based on his prior illegal possession because of the incriminating, but correct answer; (2) refuse to complete the form and lose his firearm; or (3) give a possibly incorrect answer[14] on the form by answering "no" and risk a § 922(a)(6) prosecution.

This choice presents a danger of deprivation of property and liberty without due process for two reasons. First, to require the sacrifice of one's firearm, without just compensation or a noticed, legal procedure for determination of whether that possession is illegal, is a deprivation of property without due process. As noted above, there is no invariable correlation between legality of possession and the answers on or completion of Form 4473.[15] Yet there is no hearing or other procedure to determine the legality of the pawnor's possession. The pawnor is simply denied his right to repossession — a result compelled by 18 U.S.C. §922(d) and 26 C.F.R. §178.124.[16] He receives no notice before pawning his firearm that such a taking might result

---

"We recognize that the term 'mental defective' has on occasion, been given a more expansive meaning by courts and legislatures . . . . But as we have said, we must construe the statute narrowly . . . . If it is the desire of Congress to prohibit persons who have any history of mental illness from possessing guns, it can pass legislation to that effect, but we cannot read into this criminal statute an intent to do so. We can speculate that Congress desired to keep guns from all who had a history of mental illness and we might agree that such a policy would be desirable; but we can find no support for such a holding on our part."

[14] The ambiguities of the classes of persons prohibited from possessing guns are numerous. For example, even the definition of a felon is unclear since the definition in § 922(h) is modified by the lengthy exceptions in § 921(a)(20). Another example of an ambiguous classification of persons who are prohibited from possessing firearms is discussed in the case of *United States v. Hansel*, 474 F.2d 1120 (C.A. 8 1973), discussed supra at n. 13.

[15] See page 11, supra.

[16] See page 8 supra and Government Petition Brief at page 6, n. 2.

when he returns to redeem it. See App. 19 (Testimony of Pawnshop Owner). Nor does there seem to be any adequate notice by the pawnshop when it "seizes" the firearm; the pawnbroker simply refuses redemption. Finally, the lack of any procedural safeguards is compounded by the fact that the pawnor receives no just compensation for his property; the meager loan by the pawnbroker is not just compensation for the item pawned."

Such a taking without just compensation, without any hearing (either before or after seizure) and without adequate notice (either before or after seizure), would be unconstitutional under any definition of due process. See Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972); Robinson v. Hanrahan, 409 U.S. 38 (1972); United States v. U.S. Coin & Currency, 401 U.S. 715 (1971); King v. United States, 364 F.2d 235 (C.A. 5 1966). In the absence of any hearing, even Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950), which sustained summary prehearing seizure in certain limited circumstances, would not save the procedure urged by the Government here — i.e., simply forbidding the pawnshop to return the pawnor's firearm.

Second, §922(a)(6) should be narrowly construed to exclude pawn redemption, because to punish a pawnor for a false answer on Form 4473 may be a denial of due process in that such answers are obtained under duress — i.e., the coercion effected by the fear of either losing a valuable piece of property or incriminating oneself by completing Form 4473 accurately.

" Chapter 44 does contain certain forfeiture procedures. See 18 U.S.C. § 924(d); 26 U.S.C. § 5845; United States v. One Assortment of Firearms and Ammunition, 313 F. Supp. 1056 (E.D.Tenn. 1970); United States v. One Lot of Eighteen Firearms, 325 F. Supp. 1326 (D.N.H. 1971). They do not, however, seem to apply to the

In a trilogy of cases in 1968, *Marchetti v. United States*, 390 U.S. 39, *Grosso v. United States*, 390 U.S. 62, and *Haynes v. United States*, 390 U.S. 85, this Court clearly indicated that requiring an individual to complete a Government form which requests information which may be self-incriminatory violates the Fifth Amendment. Requiring a pawnor, such as petitioner, to complete Form 4473 creates a similar problem, that is, a "real and appreciable" and not merely "imaginary and insubstantial" hazard of self-incrimination. *Rogers v. United States*, 340 U.S. 367 (1951). For petitioner to admit that he was a convicted felon might well provide the Government with a significant "link in a chain" of evidence tending to establish his guilt of illegal possession prior to the pawn transaction.

Although in the 1969 cases of *Bryson v. United States*, 396 U.S. 64 and *United States v. Knox*, 396 U.S. 77, the Court limited the reach of the *Marchetti-Grosso-Haynes* trilogy in cases involving 18 U.S.C. §1001, *Knox* indicated that an individual charged with falsely completing a required form might still challenge the filing requirement on the ground that it was generally coercive of false answers. Thus, in *Knox*, although the Court rejected Knox's direct self-incrimination attack on the filing requirement, the Court noted that "If the compulsion [to complete the form] was unlawful under Marchetti, *Knox may have a defense to this prosecution under the traditional doctrine that a person is not criminally responsible for an act committed under duress.*" *Knox v. United States*, 396 U.S. at 82-83. (Emphasis added).

---

case of a firearm forfeited to the pawnshop by a pawnor because he cannot answer Form 4473 or because he answers it so as to prevent a redemption. Indeed, there seems to be no requirement that the pawnshop, after refusing to allow the pawnor to redeem, turn the firearm over to the Government for any such formal proceedings. Thus the burden is upon the pawnor to determine the availability of relief, if any, from the confiscation.

This is precisely the situation presented by the statute in question in this case if "acquisition" is deemed to comprehend pawn redemptions. It is clear that the choice of giving a completely correct answer or refusing to answer Form 4473 would have presented such grave dangers of self-incrimination and illegal confession that a pawnor such as petitioner is coerced into giving incorrect statements on Form 4473. This duress is even more apparent since a pawnshop customer is likely to be both poor and uneducated. See App. 25 (Testimony of Petitioner).

Such coercion and duress largely disappears if the Court adopts petitioner's contention that "acquisition" does not include pawn redemptions and is limited chiefly to sales. In the purchase and sale situation, the purchaser is not operating under the coercion of summarily losing his property or incriminating himself by giving a correct answer to Form 4473. The purchaser loses only the opportunity to purchase a firearm if he cannot or will not complete Form 4473. A pawnor, however, loses his firearm if he cannot answer the Form as required.

Both this due process problem, and the due process issue presented by the absence of procedural safeguards when redemption is refused, can be avoided if §922(a)(6) is interpreted to exclude pawn redemptions.

2. Considerations of Federalism

This Court emphasized the importance of federalism in statutory construction when the Court narrowly construed a similar firearm provision in United States v. Bass, 404 U.S. 336, 339 (1971):

> *"We conclude that §1202 is ambiguous in the critical respect. Because its sanctions are criminal and because, under the Government's broader reading, the*

statute would mark a major inroad into a domain traditionally left to the States, we refuse to adopt the broad reading in the absence of a clearer direction from Congress."

The importance of federalism ran throughout the Court's opinion, and the Court emphasized, 404 U.S. at 849:

> *"There is a second principle supporting today's result: unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance. Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the States. This congressional policy is rooted in the same concepts of American federalism that have provided the basis for judge-made doctrines. As this Court emphasized only last Term in Rewis v. United States, supra, we will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction. In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." (Citations omitted.)*

The same consideration should lead this Court to construe the meaning of "acquisitions" to exclude pawn redemptions, and thus avoid federal intrusion into an area traditionally reserved to the states. Congressional efforts to delineate a federal role in gun control have proceeded from the premise that the federal government composes but one of a number of institutions responsible for the task of reducing firearm violence in this society. Indeed, it is established, as a matter of history and constitutional

statem, that "[s]tate and local governments, under the traditionally local police power, have the primary responsibility for making decisions about the impact of firearms on violence and about appropriate countermeasures." National Commission on Reform of Federal Criminal Laws, Consultant's Report on Firearms and Federal Criminal Law, Working Papers at 1075 (July 2, 1965).

Deferring to the primacy of local jurisdiction, Congress has focused its attention upon suppressing interstate movements of firearms while leaving state and local governments substantial latitude to shape their own control systems. The essential purpose has been to curtail interstate "leakage" of weapons which, in the past, has tended to frustrate enforcement efforts by those local jurisdictions which have seen fit to maintain stringent regulatory control standards. See House Report No. 1577 on the Gun Control Act of 1968, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News 4410, 4411-4413.

Moreover, pawnshops themselves and secured transactions have been an area of activity traditionally regulated by the States. Attached hereto as Appendix C is an extensive analysis of state and local laws governing pawnshops. It is apparent from this analysis that the pawnshop and the pawn transaction are and have been the subject of numerous state and local controls. See also, Annot., "Validity of Statutes or Ordinances Which Impose Duties Upon Pawnbrokers As Regards Identity of Persons With Whom They Deal or Other Means Of Enforcing Criminal Law Against Theft," 125 A.L.R. 1398; Article 9, "Secured Transactions," Uniform Commercial Code.

Given the lack of a clear expression of a congressional intention to include pawn redemptions in 922(a)(6) "acquisitions," and because pawnshops and firearm controls

have been traditionally subject to state regulation, the principles enumerated in Bass should be applied here to interpret "acquisitions" narrowly to exclude pawn redemptions.

2. Commerce Clause Considerations

Petitioner contended at trial and on direct appeal that the Government should have been required to charge and prove an interstate commerce nexus with regard both to the three firearms and the pawn transactions in which petitioner engaged. This contention is based on the language of Chapter 44 of Title 18, as well as on the principles set down by this Court in United States v. Bass and the constitutional limitations on the powers of Congress.

Section 922(a)(6) does not render a false statement unlawful unless it is "material to the lawfulness of the sale or other disposition of such firearm . . . under the provisions of this chapter [Chapter 44 of Title 18]." Petitioner contends that the reference to the "lawfulness of the sale or other disposition of such firearm" under Chapter 44 refers to 18 U.S.C. 922(h), which states as follows:

> "(h) It shall be unlawful for any person—
>
> (1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> (2) who is a fugitive from justice;
>
> (3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

> (4) who has been adjudicated as a mental defective or who has been committed to any mental institution;
>
> to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." (Emphasis added.)

Accordingly, to prove that a false statement was material to the lawfulness of the sale, it would be necessary to allege and prove that the firearm received had "been shipped or transported in interstate or foreign commerce."

The Government did not allege or prove this interstate commerce nexus as to the three rifles involved here, relying instead upon various cases which have held that such an allegation is not required under §922(a)(6). See, e.g., United States v. Menna, 451 F.2d 982 (C.A. 9 1971), cert. denied, 405 U.S. 968 (1972). The Government's theory is that the §922(a)(6) term "lawfulness under the provisions of this chapter" refers to other provisions of Chapter 44, such as 922(d), which do not contain an interstate commerce requirement.

Petitioner believes that the references in §922(a)(6) to the other sections of Chapter 44 should be narrowly construed to refer to §922(h). The primary concern of §922 (a)(6) is to prohibit the acquisition of firearms by persons whose possession would be unlawful, and §922(h) defines the circumstances under which receipt of a firearm would be unlawful. Petitioner submits that a rational reading of the statute requires that unlawful acquisition be determined only by reference to unlawful receipt, and that the lawfulness of an acquisition should be determined only by the actions and status of the acquirer, not by the actions of a third party proscribed by §922(d) or some other sec-

tion in Chapter 44. The reference in §922(a)(6) should thus be treated as limited to §922(h), and the interstate commerce requirement of §922(h), quoted above, should have been alleged and proved.

Such a limitation is supported by the Court's ruling in *United States v. Bass*, which specifically referred to Title IV of the Omnibus Crime Control Act of 1968 in requiring an interstate commerce nexus to be proved in cases of illegal firearm possession under Title VII of the same Act, 18 U.S.C. App. §1202(a). As the Court stated, 404 U.S. at 342-343:

> "Title IV [of which §922(a)(6) and §922(h) are a part] apparently does not reach possessions or intrastate transactions at all, even those with an interstate commerce nexus, but is limited to the sending or receiving of firearms as part of an interstate transportation."

If this Court holds that such an interstate commerce nexus to the firearms themselves is not required, petitioner contends that there is a substantial question as to whether Congress has power under the Commerce Clause to regulate the pawn transaction. See *United States v. Bass*, 434 F.2d 1296 (C.A. 2 1970), *aff'd on other grounds*, 404 U.S. 336 (1971). The concerns expressed in the Second Circuit's *Bass* decision regarding the scope of congressional power under the Commerce Clause would be particularly troubling if this Court were to accept the Government's expanded definition of "acquisition" in §922(a)(6) to include a pawn redemption. Typically, a redemption transaction has little if any effect on interstate commerce. A pawnor simply brings the firearm to the pawnshop, usually from his home. It is not shipped across state lines by a manufacturer or distributor. Indeed, it might be a family heirloom that had never been out of the state. Implicit recognition of

the intrastate character of pawn transactions is manifested by the fact that it is the states rather than the federal government that have traditionally regulated pawnshops. See the discussion above and Appendix C. Accordingly, §922(a)(6) should be construed to exclude pawn redemptions to avoid resolution of the question whether Congress exceeded its powers under the Commerce Clause by legislating with respect to pawn redemptions.

* * * *

Petitioner does not ask the Court to resolve the foregoing constitutional issues. The resolution of those issues in this case and in subsequent cases involving redemptions from pawn can be avoided by construing "acquisition" in §922(a)(6) to exclude redemptions. Petitioner submits that sound principles of constitutional adjudication dictate that the statute should be so construed.

CONCLUSION

For all of the above reasons, the decision below should be reversed and the case remanded with instructions that petitioner's motion for dismissal of the indictment be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	*Plaintiff-Appellee,*	No. 73-2770
vs.		
WILLIAM G. HUDDLESTON,	*Defendant-Appellant.*	

[January 8, 1975]

Appeal from the United States District Court
Central District of California

Before: CHAMBERS, CARTER and WRIGHT, Circuit Judges.

PER CURIAM:

Appellant was convicted of three counts of making a false statement in connection with the acquisition of three firearms, under 18 U.S.C. § 922(a)(6) (1970), by redeeming them from a pawnbroker.

As to appellant's first contention, Congress intended to reach wholly intrastate transactions under the Firearms Act, on the theory that such transactions affect interstate commerce. *United States v. Mouna* (9 Cir. 1971) 451 F.2d 882, 884, cert. denied, 405 U.S. 903 (1972). We hold that the statute is constitutional.

Appellant next claims that the statutory term "acquisition" was not meant to reach redemption of firearms from a pawnbroker, and that its plain meaning is not broad enough to do so, citing the factually similar case of *United States v. Laisure* (5 Cir. 1971) 460 F.2d 706, 711-12. We decline to follow that case.

We hold that the term "acquisition" in 18 U.S.C. § 922(a)(6), when read together with the ensuing language prohibiting false statements "with respect to any fact material to the lawfulness

of the sale or other disposition of such firearm," clearly and unambiguously defines an offense. The terms "acquisition" and "other disposition" are clearly correlatives. *United States v. Brebo* (10 Cir. 1972) 467 F.2d 229, 234.

The statutes were meant to and did prohibit false statements in connection with the redemption of firearms from a pawnbroker, who is a "dealer" under 18 U.S.C. § 921(a)(11)(C).

Appellant's other contentions have been considered, and they are without merit.

The judgment is affirmed.

CHAMBERS, Circuit Judge, concurring and dissenting:

I concur that the statute is constitutional as applied.

But what Huddleston did was reacquire. I do not believe that "reacquire" is necessarily included within "acquire." That seems to be a little too broad when we construe a criminal statute.

PERRAU-WALSH PRINTING CO., SAN FRANCISCO 1-15-73—480

Firearms Transaction Record

[illegible]

Under 18 U.S.C. Chapter 44 and 26 U.S.C. Chapter 53, it is unlawful for any person to engage in the business of importing, manufacturing or dealing in firearms or ammunition without a license, or to receive or possess any firearm or ammunition which has been imported or manufactured in violation of these laws. Any firearm or ammunition involved in a violation of these laws may be seized and forfeited to the United States. Persons who are not licensed under Chapter 44 may acquire, transport or receive firearms or ammunition only in accordance with the restrictions set forth in Chapter 44. Persons who are licensed under Chapter 44 may engage in the business only at the location listed on their license. Persons who are not licensed under Chapter 53 may not receive or possess a firearm which is not registered to them in the National Firearms Registration and Transfer Record. Persons who are licensed under Chapter 53 may receive firearms only in accordance with an approved application and may possess firearms only at the location listed on their license. Persons who are licensed under Chapter 53 may transfer firearms only in accordance with an approved application. Certain exceptions apply to the provisions of Chapters 44 and 53. For more information, see 18 U.S.C. Chapter 44 and 26 U.S.C. Chapter 53.

[illegible]

1. **Close and Continuous Control.** Except as authorized by this license, you may not sell or otherwise dispose, temporarily or permanently, of any firearm or ammunition to any other person. You must maintain close and continuous control over your inventory sufficient to enable you to account for the disposition of each firearm or ammunition that you receive or otherwise acquire. You must not conduct your business except at the location listed on your license.

2. **Required Records.** You must enter into your records, required by 27 CFR 478.125, each firearm you receive or otherwise acquire, and each firearm you sell or otherwise dispose of, temporarily or permanently. You must also enter into your records each round of ammunition you receive or otherwise acquire, and each round of ammunition you sell or otherwise dispose of, temporarily or permanently, that is subject to the recordkeeping requirements of 27 CFR 478.125a. You must record your firearms transactions and dispositions in a bound book. You must not make any entry in erasable media, such as pencil or a typewriter ribbon. You must not erase, alter, or mutilate any entry in the record after it has been made. You must not destroy any record required to be kept by this license or by 27 CFR Part 478 for a period of 20 years from the date of the transaction, disposition, or acquisition. You must not remove any record from your business premises except as authorized by 27 CFR Part 478.

3. **Theft or Loss.** You must report the theft or loss of any firearm or ammunition from your inventory or collection within 48 hours after you discover the theft or loss. To report a theft or loss, you must telephone the Director of Industry Operations for the area in which your business is located. You must also report the theft or loss within 48 hours after discovery to your local police department. You must file a written report of the theft or loss within 5 days after discovery on ATF Form 3310.11. You must retain a copy of the report in your records.

4. **Inventory.** You must conduct a physical inventory of all firearms and ammunition you have in your inventory at least once every 12 months. You must make the inventory available for inspection by any ATF officer who requests it. You must record the results of the inventory in your records within 5 days after the inventory is completed.

5. **Change of Address.** You must not move your business to any location other than the one listed on your license unless you first notify the Director of Industry Operations for the area in which your business is located. You must also notify the Director of Industry Operations for the area in which your business is located if you change your mailing address.

6. **Transfer Restrictions.** You must not transfer any firearm or ammunition to any person you have reasonable cause to believe is not the actual buyer. You must not transfer any firearm or ammunition to any person you have reasonable cause to believe intends to sell or otherwise dispose of the firearm or ammunition to any person listed in Section 5, above, or to any person you have reasonable cause to believe is otherwise prohibited from transportation, shipment, receipt, possession, or distribution of firearms or ammunition.

[illegible]

1. **Close and Continuous Control.** Except as authorized by this license, you may not sell or otherwise dispose, temporarily or permanently, of any firearm to any other person. You must maintain close and continuous control over your inventory sufficient to enable you to account for the disposition of each firearm that you receive or otherwise acquire. You must not conduct your business except at the location listed on your license.

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APPENDIX C

| | | |

| | | |

KEY TO NUMBERS AND LETTERS IN TABLE

Unbracketed numbers refer to applicable state statute or city ordinance sections.

Bracketed numbers and letters are explained as follows:

(1) Pawnbroker is required to keep a register in which must be recorded, among other items, a description of the pledged property and the name and address of the pawner or seller of the property.

(2) The pawnbook must be open to inspection to police and other designated authorities.

(3) Periodic reports on each transaction, containing the same information required to be recorded in the pawnbook, must be made to local police or other designated authorities.

(4) Requirement of sellers of standard firearms that some record be made prior to sale containing, at a minimum, a description of the firearm and the name and address of the purchaser. Regulations concerning weapons such as machine guns, bombs, blackjacks, stilettos, or other similar illegal weapons have not been included.

[a] Regulation specifically left to municipalities by statute or constitutional provision.

[b] Apparently no state statute on this point.

[c] Description in addition to name and address also required.

[d] Daily reports.

[e] Reports within 48 hours.

[f] Weekly reports.

[g] Monthly reports.

[h] Reports may be required by local police.

[i] Covers pistols, handguns, and other concealable weapons only.

[j] Some regulation by municipal ordinance on this point.

[k] "Truth-in-lending" type disclosure and record-keeping requirements applicable in absence of standard pawnbroker requirements.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1978

WILLIAM C. HUTCHINSON, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 1978, three copies of the Brief For Petitioner in typewritten form and three copies of the Appendix in printed form were mailed, postage prepaid to:

George Kopp, Esq.
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I further certify that all parties required to be served have been served.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1976

WILLIAM G. RUDDLESTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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H. Rep. No. 1577, 90th Cong., 2d Sess. 22

Report of the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967) 17

S. Rep. No. 1097, 90th Cong., 2d Sess. 17, 22

Uniform Commercial Code, Section 9-101 *et seq.* 12

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1076

WILLIAM C. HUDDLESTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (App. 57-58) is reported at 572 F. 2d 592.

JURISDICTION

The judgment of the court of appeals (App. 59) was entered on January 8, 1978. The petition for a writ of certiorari was filed on February 5, 1978 and was granted on April 16, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 922(a)(6):

> (a) It shall be unlawful * * *
> (6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

QUESTION PRESENTED

Whether 18 U.S.C. 922(a)(6), which prohibits the making of false statements in connection with the "acquisition" of a firearm, covers the redemption of a firearm from a pawnshop.

STATEMENT

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of three counts of making a false statement in connection with the acquisition of firearms, in violation of 18 U.S.C. 922(a)(6). He was sentenced to concurrent three year prison terms, all but twenty days (on weekends) being suspended, and was placed on probation for five years.

The evidence at trial showed that on October 6, 1971, petitioner pawned his wife's Winchester 30-30 caliber rifle at Saul's Loan and Jewelry Store, Oxnard, California, a federally licensed firearms dealer, and received in return a loan of $25 (App. 14-15, 27, 38-39, 49-50). On October 15, 1971 and December 28, 1971, petitioner pawned at the same store two other rifles belonging to his wife, a Russian 7.62 caliber rifle and a Remington .22 caliber rifle, for which he received loans of $10 and $15 respectively (App. 32-33, 38-39, 51-54).

On February 1, 1972, petitioner returned to redeem the Winchester rifle. In redeeming the weapon, petitioner was required by the proprietor to fill out a Treasury Department "Firearms Transaction Record" (Form 4473; App. 43-44). On this form, he falsely answered question "8b" which asked if he had ever been convicted of a crime punishable by more than one year's imprisonment.[1] He also signed a statement on the form certifying all responses as true (App. 10-11, 43-44). In fact, petitioner had previously been convicted of a felony (writing checks without sufficient funds) punishable by a maximum term of fourteen years' imprisonment, although he actually served only thirty days in jail. This fact, if revealed to the pawnshop proprietor, would have precluded him from transferring the rifle to pe-

[1] Question "8b" cautions the respondent that "The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year" (App. 43).

titioner (App. 20-21).[1] On March 10, 1972, petitioner redeemed the remaining two weapons, similarly answering question "8b" falsely on each of the firearm forms (App. 45-48).

A government agent testified that when petitioner was questioned as to his false responses, he admitted that he had known when filling out these forms that he was a felon and that his answers were untrue. At trial, petitioner testified that he was aware that he could have been imprisoned for more than one year on the earlier felony conviction and explained his incorrect response by claiming that he had not read the form but had merely filled it in as directed by the pawnbroker (App. 34-35, 40-41).

SUMMARY OF ARGUMENT

Petitioner clearly received fair warning that false answers on the Form 4473 could subject him to punishment. There is, accordingly, no occasion to construe the statute narrowly for lack of such warning, as was done in *United States* v. *Bass*, 404 U.S. 336.

A. 18 U.S.C. 922(a)(6) forbids making false statements "in connection with the acquisition * * * of any firearm" if the statement is "material to the lawfulness of the sale or other disposition of such firearm * * *" (emphasis added). "Acquisition"

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[1] 18 U.S.C. 922(d)(1) makes it unlawful for any dealer (including a pawnbroker) "to sell or otherwise dispose of any firearm" to one known to have been convicted of "a crime punishable by imprisonment for a term exceeding one year."

and "disposition" refer to two sides of the same transaction, and in common parlance both would refer to the transfer of a weapon from a pawnbroker to a pawnor.

What is more, Congress specifically included pawnbrokers as dealers whose transactions would come within the statutory gun control system, and did so with specific reference to their pawn transactions. It would thus be wholly inconsistent to exclude the pawn transaction itself from the reach of the statute. Congress could have made a specific exception for pawn transactions, as it did for certain other kinds of gun dealings (18 U.S.C. 922(a)(2)(A), 925). The fact that it did not, though clearly aware that pawnbrokers and their activities were generally covered by the statute, is further evidence of legislative intent to include the pawn redemption situation within the scope of the statute.

B. In adopting the Omnibus Crime Control and Safe Streets Act of 1968, Congress enacted a comprehensive program for monitoring commercial traffic in firearms and for limiting the opportunities for possession of firearms by certain classes of persons, such as felons. In light of this broad policy determination, it would be unrealistic to assume that Congress did not intend to cover the pawn situation, which can be a significant source of firearm traffic. The major concern of Congress was to keep guns out of the hands of dangerous persons, not whether the gun was being acquired by sale or redemption.

C. 18 U.S.C. 922(a)(6), interpreted to include a pawn redemption as an acquisition, is constitutional. It does not constitute a taking of property, because petitioner's own actions placed him within the statutory scheme. The statute does not unconstitutionally compel testimony. Nor does the general reach of congressional power fall short of this intrastate transaction. It is well established that a reasonable regulatory scheme directed to the vindication of interstate commerce may reach individual related transactions, even though they are wholly intrastate.

ARGUMENT

CONGRESS INTENDED IN 18 U.S.C. 922(a)(6) TO PROHIBIT THE MAKING OF A FALSE STATEMENT IN CONNECTION WITH THE REDEMPTION OF A FIREARM FROM A PAWNSHOP

The question in this case is whether the explicit congressional prohibition against making false statements in connection with the acquisition of a firearm under 18 U.S.C. 922(a)(6) may properly be read to include within that prohibition the redemption of a firearm from a pawnshop. In our view, both the statutory framework and the legislative history support the conclusion that Section 922(a)(6) (Title IV of the Omnibus Crime Control and Safe Streets Act of 1968) was intended to apply to redemptions of firearms as well as sales of second-hand weapons by pawnbrokers. The court below agreed with our

reading of the statute; so has the Court of Appeals for the Tenth Circuit, with the comment that "the statute contemplates any transfer of property." *United States* v. *Beebe*, 467 F. 2d 222, 224, petition for certiorari pending, No. 72-5866. A conflict, however, has been created by the Fifth Circuit's holding to the contrary in *United States* v. *Laizure*, 460 F. 2d 709. In *Laizure*, the court perceived an ambiguity in the language of Section 922(a)(6) and, relying upon *United States* v. *Bass*, 404 U.S. 336, invoked a rule of lenity in favor of the construction advocated here by petitioner.

We stress at the outset that the rationale of *Laizure*, and its reliance on *Bass*, which is also relied upon by petitioner (Pet. Br. 16-20), is erroneous in the present context. In *Bass* the issue was whether 18 U.S.C. App. 1202(a) (Title VII of the Omnibus Crime Control and Safe Streets Act of 1968) prohibited all possession of a firearm by a felon or only applied to possession connected with interstate commerce. This Court rested its invocation of the rule of lenity primarily on the fact that Section 1202(a) did not give "a fair warning * * * in language that the common world will understand, of what the law intends to do if a certain line is passed." 404 U.S. at 348. Here, as we shall demonstrate, a reading of Section 922(a)(6) and companion provisions, as well as the relevant legislative history, leaves no uncertainty as to the meaning of the statute.

Further, there can be no doubt that "the common world" would understand that one should not lie on

official forms, and that the proscribed conduct was clearly spelled out on the forms. There was no need to guess as to what conduct would be a violation of the law.

A. The Statutory Language and Pertinent Legislative History Demonstrate that Redemption of a Pawn Was Intended to Be Covered by the Statute.

1. Section 922(a)(6) prohibits false statements made "in connection with the acquisition or attempted acquisition of any firearm [likely to deceive] with respect to any fact material to the lawfulness of the sale or other disposition of such firearm" under the provisions of the act (emphasis added). The language on its face covers all transfer of firearms to all recipients. "Acquisition" and "sale or other disposition" are correlatives in this sentence so that if the pawnbroker "disposes", the pawnor "acquires." See Funk and Wagnall's *Standard Handbook of Synonyms, Antonyms, and Prepositions*, 345-346 (1947).

Our reading of Section 922(a)(6) is confirmed when we place it in context. Other related sections of Title IV similarly speak in terms broadly encompassing any disposition of firearms, rather than merely formal sales. Section 922(a)(1) prohibits all but licensed persons from "dealing in firearms or ammunition." Section 922(b)(1) forbids such licensed individuals "to sell or deliver" firearms to juveniles. Section 922(b)(2) makes it a crime for dealers "to sell or deliver" weapons to persons in any state where "at the place of sale, delivery or other

disposition" such transfer would violate local law. Section 922(d) provides that arms dealers may not "sell or otherwise dispose" of any firearm to convicted criminals or narcotic addicts. Section 923(g) requires all weapons dealers to maintain "records of importation, production, shipment, receipt, sale, or other disposition, of firearms . . ." (emphasis added).[1] And, directly to the point, Section 921(a)(11) includes pawnbrokers among dealers who must be licensed,[1] while Section 921(a)(12) specifically

[1] This intended effect of the broad language of the legislative provisions is underscored by a colloquy between Congressman Donohue and Attorney General Clark, during the House hearings considering Title IV of the Omnibus Crime and Safe Streets Act:

> Mr. Donohue: Do you not think, Mr. Attorney General, to attain the real objective and purpose of this bill, it should not only deal with the sale, but whoever sells or delivers?
>
> Mr. Clark: It covers delivery, too.
>
> Mr. Donohue: Where?
>
> Mr. Clark: Well, generally through the bill when you talk about—well, it would be unlawful for any licensed importer to sell or deliver. And licensed dealer to sell or deliver.
>
> Mr. Donohue: It is not restricted to just sale for consideration?
>
> Mr. Clark: No. The delivery, too.

Hearings before Subcommittee No. 5, House Committee on the Judiciary, on Anti-Crime Program, 90th Cong., 1st Sess., p. 260.

[1] Section 921(a)(11) provides:

> The term 'dealer' means (A) any person engaged in the business of selling firearms or ammunition at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels,

indicates that it is the pledge-redemption situation which brings them within the scope of the federal licensing provisions:

> The term 'pawnbroker' means any person whose business or occupation includes the taking or receiving by way of pledge or pawn, of any firearm or ammunition as security for the payment or repayment of money. [Emphasis added.]

Having included pawnbrokers in the statutory scheme because of the pawn transaction, it would be wholly inconsistent to exempt the transaction itself from the reach of the statute.

Indeed, congressional concern over the activities of pawnbrokers regarding firearms is nothing new. It can be traced back to the 1934 congressional hearings considering the administration proposal to regulate the sale and transfer of machine guns and concealable weapons (H. R. 9066). In testimony before the House Ways and Means Committee, then Assistant Attorney General Keenan advanced the position of the Department of Justice that the pawnbrokers' firearms tax be set at a rate higher than other firearms dealers, in an effort to remove the "control of firearms away from pawnbrokers." Hearings before the House Committee on Ways and Means on National Firearms Act, H. R. 9066, 73d Cong., 2d Sess., p. 91. As enacted, the National Firearms Act

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stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term 'licensed dealer' means any dealer who is licensed under the provisions of this chapter. [Emphasis added.]

of 1934 (48 Stat. 1236) placed a special tax on dealers of firearms at a rate of $200 per year; pawnbrokers were taxed at a rate of $300 per year.

Congressional attention was again directed to the relationship between pawnshops and firearms control during the 1968 hearings before the Senate Subcommittee to Investigate Juvenile Delinquency, then considering federal regulation of the interstate traffic in mail order firearms. Mr. James V. Bennett, Director of the Federal Bureau of Prisons, in his testimony before that subcommittee, recommended that higher licensing fees be charged to pawnbrokers than other firearms dealers. In explaining this difference, Mr. Bennett cited a number of examples of irresponsible dealings by pawnshops with respect to weapons, suggesting that licensing provisions should differentiate between pawnbrokers and the large number of legitimate gun dealers who make a conscientious effort to insure that guns do not get into irresponsible criminal hands. Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, on Juvenile Delinquency, 88th Cong., 1st Sess., pp. 8879-8880. The legislation at issue adopts this suggestion, setting licensing fees for dealers, other than dealers in destructive devices, at $10 per year; the license fee for pawnbrokers is $25 per year (18 U.S.C. 923(a)(3)).

2. In this statutory setting, it is clear that Congress intended the term "acquisition" in Section 922

(a)(6) to cover redemptions.[4] At least two other legislative sources endorse this conclusion. First, we have the express finding of Congress "that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with * * *." Similarly, the further findings that the "sale or other disposition" by federal licensees to non-residents had "tended to make ineffective the laws, regulations, and ordinances in the several States and local jurisdictions regarding such firearms" reflect an intent to cover any and all transfers of weapons by federally licensed dealers including, we submit, redemptions of pawned weapons. (P.L. 90-351, Section 901(a)(3) and (5), 82 Stat. 225; emphasis added).

Pointing in the same direction is the statement of Mr. David Cohen, President of the Pawnbrokers Association of the City of New York, testifying in opposition to that portion of the proposed legislation relating to pawnbrokers:

> Actually a pawnbroker is not a person engaged in the business of buying and selling at wholesale or retail and therefore is not a dealer. Pawnbrokers simply lend money on the basis of a

[4] While we disagree with petitioner's characterization of the nature of a pawn transaction (Pet. Br. 6-7) (see Uniform Commercial Code, §§ 9-101, *et seq.*), the nature of such transaction is irrelevant in view of the clear congressional intention to reach all transfers of firearms, including pawn transactions.

pledge and our experience in New York is that close to 90 percent of pledges are redeemed.

Hearings before Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, on Federal Firearms Act, 90th Cong., 1st Sess., p. 1062. Thus, although explicitly informed that a large portion of a pawnbroker's transactions in firearms were solely redemptions, Congress nevertheless chose to include all transactions of pawnbrokers within the coverage of the Act rather than merely their sales.

Had Congress been concerned only with pawnbrokers' activities in selling weapons, it would have been unnecessary to refer specifically to them in part (C) of the definition of dealer (see *supra*, pp. 9-10, n.4) as they would have been covered in part (A) as "any person engaged in the business of selling firearms or ammunition at wholesale or retail." See *United States* v. *Rosen*, 352 F. Supp. 727, 729 (D. Idaho); *McLemore* v. *United States Treasury Department*, 317 F. Supp. 1077 (N.D. Fla.). Moreover, as already observed, if petitioner's argument that Congress did not intend to reach pawn redemptions were correct, the specific definition of a pawnbroker's business as "the taking or receiving, by way of pledge or pawn" of a firearm "as security for the payment or repayment of money" would have been without meaning. Finally, it is significant that redemption transactions are not included among those expressly exempted from the provisions of Title IV

(see Sections 922(a)(2)(A) and 925).[4] In light of the focus on pawnbrokers, this cannot be deemed an oversight.

In sum, the express statutory language coupled with the legislative history manifests a clear congressional intent to cover redemption under Section 922(a)(6).[5]

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[4] Petitioner seeks to analogize the pawnbroker-redemption situation to those specific exemptions from the provisions of the act that relate to customizing and repair of rifles (Pet. Br. 13-14). But it is clear that the pawn transaction is more than a mere "interruption in possession" which might occur during repair or customization. A pawn transaction is a secured transaction, with all the rights and duties accorded such a transaction by law. The pledgee in such a transaction has been considered as having a "lien" on the collateral. See Means v. Bank of Randall, 146 U.S. 620. Upon redemption, the pawnor "acquires" exclusive possession and use of the goods which were used as collateral, as well as release from the debt obligation. If he does not redeem the goods within the prescribed time, he loses the title as well as possession.

[5] Should petitioner's construction of Section 922(a)(6) prevail, a person in his place presumably could also not be prosecuted for the same acts pursuant to Section 924(a), which provides:

> Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter * * * [shall be guilty of a crime].

Although Section 923(g) requires all firearms dealers, including pawnbrokers, to keep records, including Form 4473, of all weapons "dispositions" made by them, a pawn redemption would then not be a "disposition," and no records could be required to be kept. Such a gap would seriously impair the statutory purpose of control of firearm traffic.

B. The Congressional Policy Underlying the Statutory Scheme Underscores the Validity of Treating a Pawn Redemption as an "Acquisition" and "Disposition" Under Section 922(a)(6)

18 U.S.C. 921-928, enacted as Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351),[1] created a comprehensive system of regulation applicable to federally licensed dealers in firearms. The underlying objectives of the statutory provisions were to utilize federal action to "stem the virtually uncontrolled flow of firearms"; to assist in making local enforcement more effective; and to impose "stringent prohibitions * * * to keep dangerous devices out of the hands of dangerous people." (Senator Tydings, 114 Cong. Rec. 18219-18220). The most effective way to achieve these aims was deemed to be channeling the disposition of firearms through federally licensed dealers whose activities would be strictly controlled (114 Cong. Rec. 12808, 18220, 18230-18231).[2]

[1] Shortly before the effective date of Title IV, it was superseded by the Gun Control Act of 1968 (Public Law 90-618), which was almost identical, except for extending coverage to certain transactions involving long guns as well as handguns. All statutory language relevant to the question of interpretation here is identical in both acts.

[2] Senator Tydings expressed the purpose of these controls as follows (114 Cong. Rec. 18220):

> * * * the appropriate place to put primary responsibility for enforcement is not with State and local officials, but rather with Federal licensees who are best situated to enforce the control. For this reason, title IV greatly tightens up the qualifications of a Federal licensee over existing law and over what is contained in amendment

This rigid control over licensees and their activities is all-embracing. Only licensed manufacturers, dealers, and importers are allowed to "engage in the business" of importing, manufacturing or dealing in firearms or ammunition. 18 U.S.C. 922(a)(1). Section 923 tightened the standards for obtaining firearms licenses and substantially increased the fees for licensees. It was a key aim of these controls to keep firearms out of the possession of convicted felons or others deemed dangerous to the community. This is reflected in various statutory provisions of Title IV. For example, Section 922(d) provides that licensees may not "sell or otherwise dispose of" firearms or ammunition to anyone they know or have reason to believe is a fugitive from justice, a convicted felon or under indictment for a felony, an unlawful drug user or addict, or an adjudicated mental defective or one who has been committed to any mental institution. Further provisions forbid disposition of firearms to anyone who is prohibited from possessing or purchasing a weapon by state or local law at the place of sale or delivery. 18 U.S.C. 922(b)(2). The statute also requires that a licensee note the names, ages and places of residence of all persons to whom firearms are sold or otherwise disposed. 18 U.S.C. 922(b)(5). Additionally, the licensee is required to maintain such records in the form required by the Secretary of the Treasury, filing such reports as the regulations pre-

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No. 768 [Brooks Amendment]. And the most important responsibilities of those licensees must be undertaken with the sanction not only of a loss of license, but also criminal penalties for willful violation.

scribe (see 26 C.F.R. 178.124). Finally, the licensee's place of business is subject to inspection for the purpose of inspecting records and firearms sold on the premises. Cf. United States v. Biswell, 406 U.S. 311, 315-316. It is clear, therefore, that Congress meant to prevent those convicted of serious crimes from possessing firearms that might subsequently be utilized in further criminal enterprises. See S. Rep. No. 1097, 90th Cong., 2d Sess., p. 30; Hearings before the Senate Judiciary Subcommittee to Investigate Juvenile Delinquency, on Federal Fire Arms Act, supra."

This aim is significantly advanced by requiring that a form be completed by all persons who acquire firearms from dealers. That requirement serves the basic statutory purpose of assuring that weapons are dispensed in a regulated and orderly manner, so as to prevent their undetectable possession by criminals or others whose possession may be against public policy. This assurance of full and accurate compliance is crucial to the congressionally intended use of the regulatory scheme as an aid to law enforcement officials. See S. Rep. No. 1097, supra, at 203. The regulatory system, for example, often makes it possible to trace a firearm involved in a particular crime. Again, in riot situations, it can be useful for

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"Congress was well aware of the danger to interstate commerce in the misuse of firearms. They knew of the President's Commission on Law Enforcement and Administration of Justice Report, The Challenge of Crime in a Free Society (1967), and its compilation of statistics showing the enormous use of firearms in crimes of violence. See, e.g., S. Rep. No. 1097, 90th Cong., 2d Sess., p. 21.

law enforcement authorities to know the source of guns for the particular area and the customers of firearms dealers. Recordation fulfills this purpose. Obviously, the objective is better served if redemption transactions are included. Indeed, while the business of pawnbrokers is lawful, that business often deals with those persons to which federal gun control legislation was plainly directed. See United States v. Rosen, supra, 362 F. Supp. at 730; 114 Cong. Rec. 13225 (Senator Dodd); Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, on Juvenile Delinquency, supra, pp. 3379-3380.[*]

It is no answer that petitioner's original possession was lawful under this statute (but see infra, p. 19). Petitioner chose to place the firearm in the stream of commerce by transferring it to a registered firearm dealer. He thus placed himself within the statutory scheme by his own action. In these circumstances, he should not be heard to claim that he gained an immunity from the reach of the statute because of the nature of the transaction originally entered into with the pawnbroker.

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[*] The fact that pawnbrokers have a substantial effect on the traffic of firearms is well documented. We are informed by the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service that there are 1900 pawnbrokers who are federally licensed firearms dealers. A recent sampling of three licensed pawnbrokers in Los Angeles, California, revealed that during a one year period from July 1, 1972 to June 30, 1973, they collectively carried out a total of 2958 transactions involving firearms, of which 1057 were sales and 1791 were redemptions from pawn.

C. Congress Has the Constitutional Power to Reach the Conduct Here in Question.

The foregoing discussion has dealt with the reach of the statutory language and its legislative history, to show that Huddleston's conduct was proscribed by the statute. We now turn to petitioner's contentions that—whatever its intent—Congress could not constitutionally regulate an interstate pawn transaction in this manner.

1. *Just Compensation*

Contrary to petitioner's claim (Pet. Br. 20-22), the application of Section 922 here does not constitute a taking of property "without just compensation or a noticed, legal procedure for determination of whether that possession is illegal * * *" (Pet. Br. 21). No such proceeding is necessary here. By expressly forbidding the pawnbroker to "otherwise dispose of" weapons to petitioner and other convicted felons (18 U.S.C. 922(d)), Congress has determined that such persons may not lawfully obtain them, even though the actual receipt of the weapons would not under all circumstances be a crime. (See *United States* v. *Bass*, *supra*, 404 U.S. at 350.) In any event, Section 922(a) does not effect a "taking" of property in the circumstances of this case. Petitioner's testimony indicates that the three weapons were the property of his wife. She could have properly redeemed the guns, presuming she was not barred from lawfully acquiring a firearm.

3. Duress

Petitioner's contention (Pet. Br. 22-24) that the statute as applied constitutes a denial of due process, as his answers were obtained under duress, is insubstantial. Petitioner argues that his false answers on each of the Form 4473's were coerced by "the fear of either losing a valuable piece of property or incriminating [himself] * * *" (Pet. Br. 22).

We submit that this case is governed by the well established principle that "one who furnishes false information to the Government in feigned compliance with a statutory requirement cannot defend against prosecution for his fraud by challenging the validity of the requirement itself." *United States* v. *Knox*, 396 U.S. 77, 79 [citing *Bryson* v. *United States*, 396 U.S. 64, and *Dennis* v. *United States*, 384 U.S. 855].

Knox dealt with a contention essentially similar to petitioner's. There the defendant was charged with having wilfully made a false statement on a form required by the Internal Revenue Service, in violation of 18 U.S.C. 1001. Knox claimed that the Fifth Amendment privilege against self-incrimination precluded punishing him for the filings, because they were not voluntary, but compelled by provisions of the Internal Revenue Code. He argued that if he had truthfully completed the forms, he would have incriminated himself under state law, while if he had filed no forms at all, he would have been subject

to a federal criminal prosecution. In rejecting this claim, this Court held:

> This is not to deny that the presence of §§ 4412 and 7208 injected an element of pressure into Knox's predicament at the time he filed the forms. At that time, this Court's decisions in *United States* v. *Kahriger*, 345 U.S. 22 (1953), and *Lewis* v. *United States*, 348 U.S. 419 (1955), established that the Fifth Amendment did not bar prosecution for failure to file a form such as 11-C. But when Knox responded to the pressure under which he found himself by communicating false information, this was simply not testimonial compulsion [396 U.S. at 82]."

Here, just as in *Bryson* and *Knox*, petitioner also had avenues open to him to redeem the weapons lawfully. The weapons were the property of his wife, and she would have been able to redeem the guns without the "grave dangers of self-incrimination" that allegedly "coerced [petitioner] into giving incorrect statements on Form 4473" (Pet. Br. 24). As this Court said in *Bryson*, *supra*, "[o]ur legal system provides methods for challenging the Government's right to ask questions—lying is not one of them." 396 U.S. at 72.

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[11] As petitioner notes, this Court in *Knox* pointed out that a defendant may have available the defense that a person is not criminally responsible for an act committed under duress. 396 U.S. at 83. However, the Court went on to note that the duress defense is "one that must be determined initially at * * * trial" (*ibid.*). The record fails to indicate that petitioner sought to establish the necessary factual basis for such a defense. Indeed, at trial, petitioner stated that he had not even read the forms prior to signing them.

A. Interstate Commerce Nexus

Petitioner's claim (Pet. Br. 27-30), premised on the language of 18 U.S.C. 922(h),[11] that the prosecution was required to charge and prove an interstate commerce nexus with regard to a violation of 922(a)(6) is without merit. The legislative history of Title IV makes it clear that Section 922 was meant to apply to intrastate as well as interstate business. See, S. Rep. No. 1097, *supra*, at 118; H. Rep. No. 1577, 90th Cong., 2d Sess., p. 12. Senator Tydings, in comparing the scope of the alternative legislation offered by Senator Hruska (Amendment No. 708) and the reach of Title IV, stated that under the provisions of the Hruska Amendment (114 Cong. Rec. 18222):

> * * * [I]f a pawnbroker only receives second-hand weapons as security for the repayment of a loan and does not deal in new firearms, he is not transporting, shipping, or receiving a firearm in interstate or foreign commerce. Used weapons presumably will have come to rest in the hands of the borrower, and the transaction will be wholly intrastate. Such a pawnbroker [under Amendment No. 708] would not need a Federal firearms license to conduct over-the-counter transactions in firearms.

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[11] 18 U.S.C. 922(h) provides:

> It shall be unlawful for any person—
>
> (1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> * * * *
>
> to receive any firearm or ammunition which has been

In concluding his remarks on this aspect of the Hruska Amendment, which was not adopted, Senator Tydings noted (114 Cong. Rec. 13222):

> To say that we have effectively regulated traffic in firearms when we will not have touched the great bulk of these pawnbroker operations [interstate sales] is a complete and utter hypocrisy.

As noted by the Ninth Circuit in *United States v. Menna*, 451 F. 2d 352, 354, certiorari denied, 405 U.S. 963, in rejecting a similar claim:

> The government did not prove that the firearm in question was shipped or transported in interstate commerce. But this was not required. Section 922(h) is not involved in this prosecution. Under 18 U.S.C. § 922(d)(1), it is unlawful for a licensed dealer to sell or otherwise dispose of any firearm to any person knowing or having reasonable cause to believe that such person has been convicted of a crime punishable by imprisonment for a term exceeding one year. There is no requirement that such firearm be one which has moved in interstate commerce. The fact of Menna's prior conviction was material in view of section 922(d)(1). Congress intended to reach wholly intrastate transactions under the Firearms Act on the theory that such transactions affect interstate commerce.

Petitioner further argues in this regard that if this Court finds that the prosecution need not establish a connection with interstate commerce, then "there is a substantial question as to whether Congress has power under the Commerce Clause to regulate the

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shipped or transported in interstate or foreign commerce. [Emphasis added.]

pawn transactions" (Pet. Br. 29)." In *Perez* v. *United States*, 402 U.S. 146, this Court sustained an act punishing extortionate credit transactions whether or not a particular action directly affected interstate commerce. The power of Congress to legislate with respect to activities affecting interstate commerce—in both regulatory and criminal statutes—encompasses the power to reach wholly intrastate activities." As the Court in *Perez* stated (402 U.S. at 154):

" Petitioner's sole reliance for this proposition is on the Second Circuit's decision in *United States* v. *Bass*, 434 F. 2d 1295, affirmed on other grounds, 404 U.S. 336. But that case dealt only with 18 U.S.C. App. 1202(a)(1), not the statutory provision involved here. The Second Circuit, in *United States* v. *O'Neill*, 467 F. 2d 1972, has recently distinguished prosecutions brought under Section 922(a)(6) from those pursuant to Section 1202(a)(1). The court noted (467 F. 2d at 1973-1974):

> " " " the statute under consideration in *Bass*, 18 U.S.C. App. 1202(a) (1970), contained the phrase "in commerce or affecting commerce" and the issue before the Court was whether those words modified other conduct described in that statute. In the absence of any significant legislative history the court resolved the ambiguity in favor of the defendant. The statute in the present case, however, differs significantly from that before the Court in *Bass*. Section 922(a)(6) contains no reference to commerce. Furthermore, its legislative history reveals that Congress intended to regulate certain aspects of intrastate dealings in firearms because of their effect on interstate commerce. " " "

" See, e.g., *United States* v. *Wrightwood Dairy Co.*, 315 U.S. 110, 118; *Wickard* v. *Filburn*, 317 U.S. 111, 125; *Katzenbach* v. *McClung*, 379 U.S. 294; *Maryland* v. *Wirtz*, 392 U.S. 183. Pursuant to this power, Congress may regulate an entire

> Where the class *of activities* is regulated and that class is within the reach of federal power, the courts have no power "to excise, as trivial, individual instances" of the class. *Maryland* v. *Wirtz*, 392 U.S. 183, 193.

Petitioner does not dispute that the "class of activities" here at issue—the acquisition of firearms by convicted felons from commercial establishments—"is within the reach of federal power." Congress has expressly found (18 U.S.C. App. 1201) that "the receipt, possession, or transportation of a firearm by felons" and other specified persons constitutes:

> (1) a burden on commerce or threat affecting the free flow of commerce,
>
> (2) a threat to the safety of the President of the United States and Vice President of the United States,
>
> (3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and
>
> (4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

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class of intrastate activities if it determines that the class as a whole affects interstate commerce. See, *United States* v. *Darby*, 312 U.S. 100, 120-121; *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241; *Maryland* v. *Wirtz*, *supra*, 392 U.S. at 192-193; *Perez* v. *United States*, *supra*, 402 U.S. at 151-154.

In light of these findings, the fact that in a given case a person may be punished for swearing falsely with regard to a weapon which may not have been in commerce in the recent past does not affect the validity of the reasonable regulatory scheme here involved."

CONCLUSION

It is therefore respectfully submitted that the judgment of the court of appeals should be affirmed.

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SEPTEMBER 1978.

"The validity of the congressional power exercised under Section 922(a)(6) has been upheld by every court of appeals which has had occasion to confront the issue. *United States* v. *Crandall*, 453 F. 2d 1216, 1217 (C.A. 1); *United States* v. *O'Neill*, 467 F. 2d 1372, 1373-1374 (C.A. 2); *United States* v. *Hudson*, 460 F. 2d 1262, 1263 (C.A. 4), certiorari denied, 409 U.S. 872; *United States* v. *Nelson*, 458 F. 2d 556, 559 (C.A. 5); *United States* v. *Cassity*, 471 F. 2d 317 (C.A. 6); *United States* v. *Garner*, 465 F. 2d 265, 267 (C.A. 7); *Cody* v. *United States*, 460 F. 2d 34 (C.A. 8); *United States* v. *Menna*, 451 F. 2d 982 (C.A. 9), certiorari denied, 405 U.S. 968.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1978 [illegible] 79

REPLY BRIEF OF PETITIONER

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In the Supreme Court
of the
United States

October Term, 1973

No. 73-1076

William C. Nobleston, *Petitioner*
v.
United States of America, *Respondent*

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

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In the Supreme Court
of the
United States
October Term, 1978

No. 78-1076

[redacted]

[redacted]

REPLY BRIEF FOR PETITIONER

ARGUMENT

[redacted]

(1) The rule favoring lenity in construing ambiguous criminal statutes is a very limited rule.

(2) The rule regarding narrow construction of criminal statutes is not applicable here because of the alleged clarity of congressional intent behind the term "acquisition" in §922(a)(6).

(3) The legislative history indicates that "acquisition" includes pawn redemptions by the pawnor, because Congress included pawnbrokers as licensed firearm dealers.

First, the Government seeks to avoid confronting both the just construction and the [illegible] that would arise from the Government's construction of [illegible](a)(6) by advancing the unsubstantiated assertion that the firearms in this case could have been redeemed by petitioner's wife. Apart from the fact that this [illegible] the general issue for all pawnshop [illegible] by the Government's interpretation of [illegible](a)(6), the record contains no evidence that petitioner's wife could have redeemed the rifles. While there are no [illegible] decisions regarding the rights of persons other than the borrower, the California statute explicitly [illegible] pawnbrokers believe that the Government's [illegible] regarding the rights of [illegible] is unsound. The relevant statute, California Financial Code §21201, provides that:

"During such [redemption] periods the borrower may redeem the property upon payment of the loan and interest charges." (Emphasis added.)

This [illegible] expressly restricts redemptions to the pawnor only.

[illegible] contrary to the suggestions of the Government, petitioner [illegible] that the statute is unconstitutional [illegible] that the construction urged by the Government [illegible] Court held if the statute [illegible] that [illegible] will be raised by the [illegible] resolved by the Government [illegible] of these constitutional [illegible] the assertion that there [illegible] the [illegible] the [illegible]

(4) The purpose of the Omnibus Crime Control and Safe Streets Act of 1968 would be furthered if space reimpositions were included within "acquisitions" in §924(a)(2)(B).

Petitioner believes that each of these arguments is unsound, and petitioner will discuss the facts in each separately. Petitioner will then discuss the basic flaw in the Government's overall position.

A. THE RULE REQUIRING NARROW CONSTRUCTION OF CRIMINAL STATUTES IS A FUNDAMENTAL AND MORALLY BASED RULE

The Government's brief argues that the rule requiring lenity in the construction of ambiguous criminal statutes is a limited rule applicable only when the law does not give a fair warning. It proposes that the common words will understand of what the law intends to do if a conflict line is passed. (United States v. Bass, 404 U.S. 336 (1971)). Such a narrow reading of the principle would be at odds with numerous other decisions, [illegible] such as Bass v. United States, 404 U.S. 336 (1971), [illegible] Bass makes it clear that the rule is based upon much deeper and broader principles, and has far greater applicability than the Government would have it. It is [illegible] Bass [illegible]

"Given this ambiguity, we adopt the narrower reading: the phrase 'in commerce or affecting commerce' is part of all three offenses, and the present conviction must be set aside because the Government has failed to show the requisite nexus with interstate commerce. This result is dictated by two wise principles this Court has long followed.

"First, as we have recently reaffirmed, 'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.' Rewis v. United States, 401 U.S. 808, 812 (1971). See also Ladner v. United States, 358 U.S. 169, 177 (1958); Bell v. United States, 349 U.S. 81 (1955); United States v. Five Gambling Devices, 346 U.S. 441 (1953) (plurality opinion for affirmance). In various ways over the years, we have stated that 'when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.' United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221-222 (1952). This principle is founded on two policies that have long been part of our tradition. First, 'a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.' McBoyle v. United States, 283 U.S. 25, 27 (1931) (Holmes, J.). See also United States v. Harriss, 347 U.S. 174 (1952). Second, because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal

"activity. This policy embodies 'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.' H. Friendly, Mr. Justice Frankfurter and the Reading of Statutes, in Benchmarks 196, 209 (1967). Thus, where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant. Here, we conclude that Congress has not 'plainly and unmistakably,' *United States v. Gradwell*, 243 U.S. 476, 485 (1917), made it a federal crime for a convicted felon simply to possess a gun absent some demonstrated nexus with interstate commerce."

The rule enunciated in *Bass* is a fundamental rule embodying important considerations of the separation of powers, as well as considerations of fairness. The policy underlying the rule forces Congress, when it is proscribing criminal activity, to be precise. The Judiciary is therefore not required to make impossible, time-consuming and post hoc determinations of what Congress might have meant when it enacted a particular statute. As stated by Mr. Justice Frankfurter in *Bell v. United States*, 349 U.S. 81, 83 (1955):

"When Congress has the will, it has no difficulty in expressing it—when it has the will, that is, of defining what it desires to make the unit of prosecution and, more particularly, to make each stick in a faggot a single criminal unit. When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity. And this is not out of any sentimental consideration, or for want of sympathy with the purpose of Congress in proscribing evil or anti-social conduct."

sufficiently aware of the pawn transaction so that it could have specifically included it in §922(a)(6) if it so desired (just as it did in §922(j)).

Concerning the legislative history cited by the Government, it should be noted that the Government does not cite one Congressional Report — either House or Senate — having a bearing on the Section in question. On the other hand, petitioner cited numerous specific instances in Senate and House reports that indicated with clarity that §922(a)(6) was limited to *sales*. The only legislative materials the Government brings to this question are some scattered, general comments in the course of the hearings and debates on various firearms bills.

An example is the Government's reliance on the testimony of Attorney General Clark before the House hearings considering Title IV. Government Brief at 9 n.8. The Government cites this testimony to support the self-evident, but irrelevant, proposition that Title IV in general covers delivery of firearms. Such a general statement does not clarify the specific provision in question. Again it only confirms the fact that Congress could have, if it desired, used a broader term in §922(a)(6) than it did.[4]

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[4] Moreover, it is noteworthy that in his testimony Attorney General Clark also confirms petitioner's contention that the bill was not intended to register or record firearms owned or possessed prior to the 1968 law and that the only records would be those for subsequent purchases. This purpose would be frustrated by requiring pawn redeemers to fill out Form 4473 at their peril.

The following is a colloquy between Congressman McClory and Attorney General Clark, Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary, 90th Cong., 1st Sess., pp. 373-374 (1967):

"Mr. McClory . . . . Let me ask this question. Is it not the purpose of this legislation to provide a record to the Federal Government of every person who owns or possesses any kind of a firearm whatsoever?

Another example is the Government's reliance on the testimony of Mr. James V. Bennett, Director of the Federal Bureau of Prisons, in testimony before the Senate Subcommittee to Investigate Juvenile Delinquency. This testimony is cited by the Government, at page 11 of the Government's Brief, to support the contention that Congress was concerned with pawn redemptions. However, a reading of Mr. Bennett's testimony makes it clear that Mr. Bennett, as well as the Senators at the Hearing, were concerned with firearm *sales* by pawnbrokers, not redemptions by people who pawn guns at pawnshops.[3]

"Mr. Clark. No; it would not accomplish that. It does not reach the guns that are presently in private ownership . . . .

"Mr. McClory. In other words every dealer would be licensed and the dealer would be required to keep records, would he not, which would be available for inspection by the Secretary of the Treasury, which would give information with regard to every sale of firearms covered in the legislation?

"Mr. Clark. That is correct.

"Mr. McClory. The only limitation, then, would be with regard to sales that have taken place prior to the time that this law would become effective?

"Mr. Clark. Plus subsequent private sales that were not made by licensed dealers. But it is an enforcement device. This is how you determine the compliance with the law."

[3] Mr. Bennett vividly describes numerous instances of gun *sales* by pawnbrokers to criminals. Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pp. 3367, 3368, 3369, 3370, 3373, 3374, 3380 (1965). As he stated: "It is a simple matter for anyone of fairly mature appearance to buy a handgun at pawnshops . . . ." (Emphasis added). *Ibid.* at 3376.

As stated by Senator Keating, in responding to Mr. Bennett's description of such sales by pawnbrokers:

"Senator Keating. Your candor is refreshing, and it is just wonderful to hear such a frank statement from a witness. I fear as a lawyer that there might be a question of equal protection of the laws involved in charging one license fee for one in selling guns who was not a pawnbroker and one who was, but I get your point . . . ." (Emphasis added). *Ibid.* at 3380.

C. THE FACT THAT PAWNBROKERS ARE INCLUDED AS LICENSED FIREARMS DEALERS DOES NOT INDICATE THAT THE TERM ACQUISITION IN §922(a)(6) WAS MEANT TO INCLUDE REDEMPTIONS FROM PAWN BY THE PAWNOR.

There is no dispute that pawnbrokers were specifically included in the Omnibus Crime Control and Safe Streets Act of 1968 as firearms "dealers". However, this fact does not in any way support the Government's conclusion that redemptions are "acquisitions". If anything, it confirms the fact that Congress was concerned with firearm sales in §922(a)(6). And the failure in the Government's logic is indicated by the legislative material on which the Government relies, as well as by an understanding of the nature of the pawnbroker business.

Pawnbrokers are included within the coverage of the statute by virtue of the fact that they are defined as a "dealer". Section 921(a)(11) defines "dealer" to mean:

> "(A) any person engaged in the business of selling firearms or ammunition at wholesale or retail, . . . or (C) any person who is a pawnbroker."

The Government argues that the only reason pawnbrokers were separately included in this definition was specifically to cover the pawn *redemption*, because pawnbrokers would already be encompassed within part (A) of the definition of dealer. For the reasons discussed *infra*, this argument and its underlying assumption are unsound. Furthermore,

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See also the statement of Carl L. Perian, Staff Director for the Subcommittee, in response to Mr. Bennett's discussion of pawnbrokers' selling of guns and Mr. Bennett's recommendation that pawnbrokers should be regulated: "Mr. Perian. To insure that the guns they sell do not get into irresponsible or criminal hands." (Emphasis added). *Ibid.* at 4383.

the legislative history cited by the Government to support this contention is to the contrary. That is, the focus of Congressional concern was on sales of firearms by pawnbrokers — not redemptions. The Government cites the testimony of Mr. David Cohen, President of the Pawnbrokers Association of the City of New York, before a Senate Subcommittee. Government Brief at 12-13. The Government asserts that this testimony shows that pawnbrokers were included in the law to cover pawn redemptions. The error in this reasoning is not only apparent from reading the testimony quoted in the Government's Brief, but becomes even more apparent from reading the entirety of the testimony referred to, but not quoted, by the Government:

"Actually a pawnbroker is not a person engaged in the business of buying and selling at wholesale or retail and therefore is not a dealer. Pawnbrokers simply lend money on the basis of a pledge and our experience in New York is that close to 90 percent of pledges are redeemed. Where a pledge is not redeemed, it may, after a statutory period of time, be sold at public auction and, of course, the pawnbroker may bid to protect his equity. A fair proportion of firearms (rifles and shotguns) which are sent to auction are sold and only the remainder are purchased by the pawnbroker for ultimate outlet in his shop." (Emphasis on material omitted by Government).

As the testimony of Mr. Cohen indicates, pawnbrokers are engaged in the business of lending money — not selling firearms. Congress, therefore, may have thought, as did Mr. Cohen, that a person who is engaged in the lending business might not be considered to be "engaged in the business of selling firearms . . . at wholesale or retail."

[1] Hearings Before the Subcommittee to Investigate Juvenile Delinquency of The Senate Committee on the Judiciary, 90th Cong., 1st Sess., p. 1042 (1967).

However, as the Government points out, Congress was concerned with sales by pawnbrokers. Therefore, to clarify any uncertainty — an uncertainty supported by the fact that sales by pawnbrokers are at most merely incidental to their business — Congress specifically included pawnbrokers within the definition of a "dealer." Moreover, Congress could well have been concerned that even if pawnbrokers were found to be "engaged in the business of selling firearms" within the meaning of part (A) of the definition of "dealer," the unique character of foreclosure sales (such as the auctions described by Mr. Cohen) might not be considered "selling . . . at wholesale or retail." To avoid this uncertainty, Congress specifically included a pawnbroker within the definition of "dealer".[1]

Consequently, it does not follow from the specific inclusion of pawnbrokers within the definition of dealer in §921 that Congress intended to subject a pawn redemption to the coverage of §922(a)(6). First, Congress may have been concerned with other aspects of the pawnbroker's business — such as buying stolen firearms. See 18 U.S.C. §922 (j). Congress was also aware of the dual aspect of a pawnbroker's business. The primary business of the pawnbroker, as indicated by the testimony of Mr. Cohen, is the lending of money. The normal pawn transaction, when completed, merely restores possession of the pawned item

[1] Congress may also have been concerned with the possibility of sales of used firearms by pawnbrokers through foreclosure auctions. See, e.g., the testimony of Mr. James Vernor which is cited in the Government's brief at 11. Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 85th Cong., 1st Sess., pt. 2, at 1 (1957). "Here is one fellow who went in and wanted a Mauser which for a gun. He did not have any money. He could not go out in a legitimate store to dealer, I want to bring them [pawnbrokers] under Federal firearms regulations, because a great many guns do not come through the mails that get in possession. They go through a pawnbroker's office."

and brings about a return to the status quo. When a firearm is involved, the redemption returns the firearm to the original possessor — it does not either increase the circulation of firearms or place firearms in the hands of new possessors. As a result, absent positive indications to the contrary, it is rational to assume that Congress did not intend to include a redemption in §922(a)(6).

On the other hand, Congress was aware of the fact that the pawnbroker-lending business may involve a foreclosure sale which results in possession of the pawned item by a new party unrelated to the pawnor. Petitioner submits that it is this sales transaction, and only this transaction, that Congress intended to encompass within §922(a)(6). To ensure coverage of such sales, Congress specifically included a pawnbroker within the definition of a "dealer". As noted above, it is reasonable to assume that this specific inclusion was due to uncertainty as to whether pawnbrokers were "engaging in the business of selling" and, if so, whether such "selling" was "at wholesale or retail". Petitioner submits that there is no support for attributing a broader purpose to Congress as a result of the inclusion of pawnbroker within the definition of "dealer"; and that there is ample support, such as the testimony of Mr. Cohen and Mr. Bennett cited by the Government,[9] for the fact that Congress was concerned *only with sales by pawnbrokers—not redemptions.*

In short, the obvious fact that pawnbrokers are covered by Title IV does not indicate any Congressional intent — much less a clear intent — to control the pawnor's redemption of the firearm he pawned. Indeed, the legislative history cited by the Government only confirms petitioner's

[9] See footnotes 6 and 8, *supra*, and Government Brief at 11, 12, and 13.

contention that Congressional concern in §922(a)(6) was with gun *sales* — whether by retail gun stores, by hardware stores, or by pawnshops."[10]

D. INCLUDING PAWN REDEMPTIONS WOULD NOT PROMOTE THE PURPOSES OF THE LAW.

The Government suggests that including a pawn redemption in §922(a)(6) would promote the purposes of the statutory scheme. This is little more than a request for this Court to legislate a phobibition that Congress chose not to enact. In any case, as indicated in petitioner's brief, including the pawn redemption within §922(a)(6) would not materially further those interests cited by the Government. Indeed, such an application would contravene an essential element of that legislation by resulting in de facto registration or confiscation of currently owned firearms."[11]

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[10] The numerous debates in the Senate regarding Title IV of The Omnibus Crime Control Act, cited by the Government, support this contention. For example, when Senator Dodd, who sponsored the bill, made his initial address, he referred continually to gun *sales*. 114 Cong. Rec. 12303 (May 8, 1968). Indeed, Senator Dodd even stresses sales when he explains the recordkeeping requirements of the bill, of which §922(a)(6) is a part. As he stated, 114 Cong. Rec. 12309:

> "The fourth major provision of Title IV requires that all *purchasers* of firearms from Federal licensees be required to identify themselves by name, address and age. This does not seem to me to be very much to ask.
>
> . . .
>
> "Title IV also provides that the licensee would have to record the identity of the *purchaser* and maintain this record in his files." (Emphasis added.)

[11] The absence of an intent to register firearms through the 1968 gun law is clear in the various Senate debates cited in the Government's Brief. As Senator Clark stated, 114 Cong. Rec. 12483: "The bill does not deal with gun permits or registration . . . ." See also the colloquy quoted above, n.5, between Attorney General Clark and Congressman McClory.

The Government's argument that it would be beneficial to require all pawn redeemers to fill out Form 4473 or lose their firearms is merely a request by the Government to legislate a gun control law that Congress did not pass. Obviously Congress had a variety of restrictions it could have enacted to restrict firearm possession. For example, Congress might have required confiscation of all firearms possessed by felons or the registration of said firearms. But Congress did not. It passed only a limited law. And despite the desires of the Justice Department and the Treasury Department for stricter controls than Congress passed, this should be left to Congress — not the Courts.

As indicated in petitioner's brief, the Justice Department and the States do have sufficient enforcement devices to prevent persons such as petitioner from possessing a firearm — if that is their goal. A pawn transaction is an open, public transaction, and the legality of a pawnor's possession can be easily resolved in a straight-forward trial for illegal possession under 18 U.S.C. App § 1202(a) or other unlawful possession statutes such as 26 U.S.C. § 5861(d).

Indeed, in light of such cases as *United States v. Craven*, 478 F.2d 1329 (C.A. 6 1973), where the proof necessary for conviction for illegal firearm possession has been held to be quite minimal, the Government's alleged need for expanding the scope of § 922(a)(6) is even more questionable. In *Craven*, mere constructive joint possession of a firearm was held to be sufficient; and this possession was held to be sufficiently demonstrated only by a showing that the guns were found in a house "constructively possessed" jointly by the defendant, that the guns were in a room which the defendant had "constructive joint possession of," and that the defendant made oral admissions after arrest that he was a gun collector.

Under the *Craven* decision, a pawnor could be convicted for illegal possession based upon the pawn transaction itself. The facts for such a conviction exist before the redemption ever takes place. Furthermore, no essential element of proof would be supplied by the pawnor's completion of Form 4473 upon redemption. Nor is any real element of deterrence to repossession added by use of the Form upon redemption. The felon intent upon repossessing his firearm will not be deterred by being asked to fill out Form 4473. In short, the Government has the tools to prosecute for illegal possession, if such is the case; the Government should not be allowed to circumvent such a normal prosecution by an unnecessary and unwarranted extension of §922(a)(6).

E. THE BASIC FALLACY OF THE GOVERNMENT'S POSITION.

In essence, the Government's position is that §922(a)(6) applies to *any transfer* of a firearm from a licensed firearm dealer to anyone. See Government Brief at 12 note 5. The Government in effect argues that the term "acquisition" is infinite in its meaning. Thus, the transfer by the dealer to a clerk for processing, the transfer to a warehouse for storage, the transfer to an assessor for inspection, or a transfer for cleaning, would all be subject to §922(a)(6). Each such transfer would therefore require the execution of a Form 4473, and the recipient would be liable for any false oral or written statements. If Congress intended such a broad meaning, Congress certainly did not make it evident by use of the term "acquisition". The term "acquisition" connotes something narrower than mere physical transfer. Rather, when viewed against the legislative history, the term connotes a sale or some other change in possession which results in a new person becoming the

possessor of the firearm for his own unlimited purposes. Thus, if petitioner's firearms had been forfeited by default on the loans and were sold to another person, that person would be "acquiring" the firearms and could be required to complete Form 4473. Petitioner, however, was simply repossessing the same firearms that he pawned.

CONCLUSION

Petitioner submits that the legislative materials cited in the Government's Brief confirm petitioner's interpretation that the term "acquisition" is limited to sales. At the very least, the Government's Brief affirms petitioner's contention that the term "acquisition" is ambiguous. Furthermore, petitioner submits that the Government's arguments for construing "acquisition" broadly are not only unfounded, but contravene the basic intent of the federal gun control legislation and the rule requiring narrow construction of criminal statutes.

Respectfully submitted,

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Attorneys for Petitioner

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

WILLIAM C. HUDDLESTON, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 1973, three copies of the Reply Brief For Petitioner were sent by air express delivery to:

Department of Justice
Office of the Solicitor General
Washington, D. C. 20530
Counsel for Respondent

I further certify that all parties required to be served have been served.

Respectfully submitted,
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By _____
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Attorneys for Petitioner

HUDDLESTON *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 72-1076. Argued November 7, 1973—Decided March 26, 1974

Petitioner, a previously convicted felon, was convicted of violating 18 U. S. C. § 922 (a)(6), a part of the Gun Control Act of 1968, by falsely stating, in connection with the redemption from a pawnbroker of three guns petitioner had pawned, that he had not been convicted of a crime punishable by imprisonment for more than a year. The pawnbroker was a federally licensed firearms dealer. The Court of Appeals affirmed. Section 922 (a)(6) makes it an offense knowingly to make a false statement "in connection with the acquisition . . . of any firearm . . . from a . . . licensed dealer" and "intended or likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the sale or other disposition of such firearm . . . ." *Held:* Section 922 (a)(6) applies to the redemption of a firearm from a pawnshop. Pp. 819–833.

(a) Petitioner's contention that the statute covers only a sale-like transaction is without merit, since "acquisition" as used in § 922 (a)(6) clearly includes any person, by definition, who "comes into possession, control, or power of disposal" of a firearm. Moreover, the statutory terms "acquisition" and "sale or other disposition" are correlatives. It is reasonable to conclude that a pawnbroker might "dispose" of a firearm through a redemptive transaction. Finally, Congress explicitly included pawnbrokers in the Gun Control Act, specifically mentioned pledge and pawn transactions involving firearms, and did not include them in the statutory exemptions. Pp. 819–823.

(b) That pawnshop firearms redemptions are covered by the challenged provision comports with the legislative history of Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 and the Gun Control Act of 1968, which are aimed at controlling access to weapons by those whose possession thereof is contrary to the public interest, through a regulatory scheme focusing on the federally licensed firearms dealer. Pp. 824–829.

(c) Section 922 (a)(6) contains no ambiguity warranting a narrow construction in petitioner's favor, and application of the

statute to the pawn redemptions here raises no issue of constitutional dimension. Pp. 820–832.

472 F. 2d 962, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, MARSHALL, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting opinion, post, p. 832.

Harvey I. Saferstein argued the cause and filed briefs for petitioner.

Danny J. Boggs argued the cause for the United States. With him on the brief were *Solicitor General Bork*, *Assistant Attorney General Petersen*, and *Jerome M. Feit*.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether 18 U. S. C. § 922 (a)(6),[1] declaring that it is unlawful knowingly to make a false statement "in connection with the acquisition . . . of any firearm . . . from a . . . licensed dealer," covers the redemption of a firearm from a pawnshop.

I

On October 6, 1971, petitioner, William C. Huddleston, Jr., pawned his wife's Winchester 30-30-caliber rifle for $25 at a pawnshop in Oxnard, California. On the following October 15 and on December 28, he pawned at

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[1] "§ 922. Unlawful acts.

"(a) It shall be unlawful—

. . . . .

"(6) for any person in connection with the acquisition . . . of any firearm . . . from a . . . licensed dealer . . . knowingly to make any false or fictitious oral or written statement . . . intended or likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the sale or other disposition of such firearm . . . under the provisions of this chapter."

the same shop two other firearms, a Russian 7.62-caliber rifle and a Remington .22-caliber rifle, belonging to his wife. For these he received loans of $10 and $15, respectively. The owner of the pawnshop was a federally licensed firearms dealer.

Some weeks later, on February 1, 1972, and on March 10, Huddleston redeemed the weapons. In connection with each of the redemptions, the pawnbroker required petitioner to complete Treasury Form 4473, entitled "Firearms Transaction Record." This is a form used in the enforcement of the gun control provision of Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 225, as amended by the Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213, of which the above-cited 18 U. S. C. § 922 (a)(6) is a part. Question 8b of the form is:

> "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year.)"

The question is derived from the statutory prohibition against a dealer's selling or otherwise disposing of a firearm to any person who "has been convicted in any court of . . . a crime punishable by imprisonment for a term exceeding one year." 18 U. S. C. § 922 (d)(1).[1] Petitioner answered "no" to Question 8b on each of the three

[1] "§ 922. Unlawful acts.

"(d) It shall be unlawful for any . . . licensed dealer . . . to sell or otherwise dispose of any firearm . . . to any person knowing or having reasonable cause to believe that such person—

"(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year."

Forms 4473. He then affixed his signature to each form's certification that the answers were true and correct, that he understood that a person who answers any of the questions in the affirmative is prohibited by federal law from "purchasing and/or possessing a firearm," and that he also understood that the making of any false statement with respect to the transaction is a crime punishable as a felony.

In fact, Huddleston, six years earlier, had been convicted in a California state court for writing checks without sufficient funds, an offense punishable under California law by a maximum term of 14 years.[1] This fact, if revealed to the pawnshop proprietor, would have precluded the proprietor from selling or otherwise disposing of any of the rifles to the petitioner because of the proscription in 18 U. S. C. § 922 (d)(1).

Huddleston was charged in a three-count indictment with violating 18 U. S. C. §§ 922 (a)(6) and 924 (a).[2] He moved to dismiss the indictment, in part on the ground that § 922 (a)(6) was never intended to apply, and should not apply, to a pawnor's redemption of a weapon he had pawned. This motion was denied. Petitioner then pleaded not guilty and waived a jury trial.

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[1] Cal. Penal Code § 476a (1970). The California complaint against Huddleston was in six counts and contained an allegation that he had been convicted previously in the State of Iowa of an offense which, if committed in California, would have been a violation of § 476 of the California Penal Code. He was eventually sentenced on the check charge to 30 days in jail.

[2] "§ 924. Penalties.

"(a) Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, . . . shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine."

The Government's evidence consisted primarily of the three Treasury Forms 4473 Huddleston had signed; the record of his earlier California felony conviction; and the pawnbroker's federal license. A Government agent also testified that petitioner, after being arrested and advised of his rights, made statements admitting that he had known, when filling out the forms, that he was a felon and that he had lied each time when he answered Question 8b in the negative.

Huddleston testified in his own defense. He stated that he did not knowingly make a false statement; that he did not read the form and simply answered "no" upon prompting from the pawnbroker; and that he was unaware that his California conviction was punishable by a term exceeding one year.[8]

The District Judge found the petitioner guilty on all counts. He sentenced Huddleston to three concurrent three-year terms. The sentences were suspended, however, except for 20 days to be served on weekends. The United States Court of Appeals for the Ninth Circuit, by a divided vote, affirmed the conviction. 472 F. 2d 302 (1973). The dissenting judge agreed that the statute was constitutional as applied, but concluded that what Huddleston did was to "reacquire" the rifles, and that "reacquire" is not necessarily included within the statute's term "acquire." *Id.*, at 303. We granted certiorari, 411 U. S. 930 (1973), to resolve an existing conflict among the circuits on the issue whether the

[8] Huddleston at first testified that his California attorney and his probation officer there told him that when he completed his probation period and made restitution, "it would go on record as a misdemeanor," and that the attorney had told him he "couldn't get over a year." App. 37, 39. Upon inquiry by the court, he testified that when he was arraigned he thought he "could get more than one year," and was so informed. App. 41.

prohibition against making false statements in connection with the acquisition of a firearm covers a firearm's redemption from a pawnshop.[4]

II

Petitioner's assault on the statute under which he was convicted is two pronged. First, it is argued that both the statute's language and its legislative history indicate that Congress did not intend a pawnshop redemption of a firearm to be an "acquisition" covered by the statute. Second, it is said that even if Congress did intend a pawnshop redemption to be a covered "acquisition," the statute is so ambiguous that its construction is controlled by the maxim that ambiguity in a criminal statute is to be resolved in favor of the defendant.

We turn first to the language and structure of the Act. Reduced to a minimum, § 922 (a)(6) relates to any false statement made "in connection with the acquisition . . . of any firearm" from a licensed dealer and intended or likely to deceive the dealer "with respect to any fact material to the lawfulness of the sale or other disposition of such firearm."

Petitioner attaches great significance to the word "acquisition." He urges that it suggests only a sale-like transaction. Since Congress in § 922 (a)(6) did not use words of transfer or delivery, as it did in other sections of the Act, he argues that "acquisition" must have a narrower meaning than those terms. Moreover, since a pawn transaction is only a temporary bailment of personal property, with the pawnshop having merely a security interest in the pledged property, title or ownership is constant in the pawnor, and the pawn-

[4] In agreement with the Ninth Circuit's decision is *United States* v. *Reebe*, 467 F. 2d 222 (CA10 1972). To the contrary is *United States* v. *Laisure*, 460 F. 2d 709 (CA8 1972).

plus-redemption transaction is no more than an interruption in the pawnor's possession. The pawnor simply repossesses his own property, and he does not "acquire" any new title or interest in the object pawned. At most, he "reacquires" the object, and reacquisition, as the dissenting judge in the Court of Appeals noted, is not necessarily included in the statutory term "acquisition."

On its face, this argument might be said to have some force. A careful look at the statutory language and at complementary provisions of the Act, however, convinces us that the asserted ambiguity is contrived. Petitioner is mistaken in focusing solely on the term "acquisition" and in enshrouding it with an extra-statutory "legal title" or "ownership" analysis. The word "acquire" is defined to mean simply "to come into possession, control, or power of disposal of." Webster's New International Dictionary (3d ed., 1966, unabridged); *United States* v. *Laisure*, 460 F. 2d 709, 712 n. 3 (CA5 1972). There is no intimation here that title or ownership would be necessary for possession, or control, or disposal power, and there is nothing else in the statute that justifies the imposition of that gloss. Moreover, a full reading of § 922 (a) (6) clearly demonstrates that the false statements that are prohibited are those made with respect to the lawfulness of the sale "or other disposition" of a firearm by a licensed dealer. The word "acquisition," therefore, cannot be considered apart from the phrase "sale or other disposition." As the Government suggests, and indeed as the petitioner implicitly reasoned at oral argument, Tr. of Oral Arg. 11, if the pawnbroker "sells" or "disposes" under § 922 (a)(6), the pawnor necessarily "acquires." These words, as used in the statute, are correlatives. The focus of our inquiry, therefore, should be to determine whether a "sale or other disposition" of a firearm by a pawnbroker encompasses the redemption of the firearm by a pawnor.

Clearly, a redemption is not a "sale" for the simple reason that a sale has definite connotations of ownership and title. Some "other disposition" of a firearm, however, could easily encompass a pawnshop redemption. We believe that it does.

It is the dealer who sells or disposes of the firearm. The statute defines the dealer to be:

> "(A) any person engaged in the business of selling firearms or ammunition at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) *any person who is a pawnbroker.*" 18 U. S. C. § 921 (a)(11) (emphasis supplied).

It defines a "pawnbroker" as "any person whose business or occupation includes the taking or receiving, *by way of pledge or pawn*, of any firearm or ammunition as security for the payment or repayment of money." 18 U. S. C. § 921 (a)(12) (emphasis supplied).

These definitions surely suggest that a "sale or other disposition" of a firearm in a pawnshop is covered by the statute. This, of course, does not of itself resolve the question as to exactly what "other disposition" by a pawnbroker is included. It should be apparent, however, that if Congress had intended to include only a pawnbroker's default sales of pledged or pawned goods, or his wholesale and retail sales of nonpawned goods, and to exclude the *redemption* of pawned articles, then the explicit inclusion of the pawnbroker in the definition of "dealer" would serve no purpose, since part (A) of the definition, covering wholesale and retail sales, would otherwise reach all such sales. *United States* v. *Rosen*, 352 F. Supp. 727, 729 (Idaho 1973). At oral argument counsel suggested that the specific reference to a pawnbroker might have been intended to include "disposition"

by barter, swap, trade, or gift. Tr. of Oral Arg. 5–7. This interpretation strains belief. Trades or gifts are not peculiar to pawnbrokers. Wholesalers and retailers may indulge in such dispositions. There is nothing in the legislative history to indicate that this interpretation prompted the specific mention of a pawnbroker in part (C) of the definition. To the contrary, the committee reports indicate that part (C) "specifically provides that a pawnbroker *dealing in firearms* shall be considered a dealer." H. R. Rep. No. 1577, 90th Cong., 2d Sess., 11 (1968) (emphasis supplied). See also S. Rep. No. 1501, 90th Cong., 2d Sess., 30 (1968).

We also cannot ignore the explicit reference to a firearm transaction "by way of pledge or pawn" in the statutory definition of "pawnbroker" in § 921 (a)(12). Had Congress' desire been to exempt a transaction of this kind, it would have artfully worded the definition so as to exclude it. We are equally impressed by Congress' failure to exempt redemptive transactions from the prohibitions of the Act when it so carefully carved out exceptions for a dealer "returning a firearm" and for an individual mailing a firearm to a dealer "for the sole purpose of repair or customizing." § 922 (a)(2)(A). Petitioner contends that a redemptive transaction is no different from the return of a gun left for repair. His argument is that the pawned weapon is simply "returned" to the individual who left it and represents a mere restoration to its original status. We believe, however, that it was not unreasonable for Congress to choose to view the pawn transaction as something more than the mere interruption in possession typical of repair. The fact that Congress thought it necessary specifically to exempt the repair transaction indicates that it otherwise would have been covered and, if this were so, clearly a pawn transaction likewise would be covered.

Other provisions of the Act also make it clear that the statute generally covers all transfers of firearms by dealers to recipients. Section 922 (a)(1) makes it unlawful for any person, except a licensed importer, manufacturer, or dealer, to engage in the business of "dealing" in firearms, or in the course of such business "to ship, transport, or receive any firearm." Section 922 (b)(1) makes it unlawful for a dealer "to sell or deliver" firearms of specified types to persons under 18 or 21 years of age. Section 922 (b)(2) makes it unlawful for a dealer to "sell or deliver" a weapon to a person in any State where "at the place of sale, delivery or other disposition," the transfer would violate local law. Section 922 (d) makes it unlawful for a dealer "to sell or otherwise dispose of" a firearm to a person under a felony indictment, a felon, a fugitive, a narcotic addict, or a mental defective. Section 923 (g) requires that each licensed dealer maintain "records of importation, production, shipment, receipt, sale, or other disposition, of firearms."

In sum, the word "acquisition," as used in § 922 (a)(6), is not ambiguous, but clearly includes any person, by definition, who "come[s] into possession, control, or power of disposal" of a firearm. As noted above, "acquisition" and "sale or other disposition" are correlatives. It is reasonable to conclude that a pawnbroker might "dispose" of a firearm through a redemptive transaction. And because Congress explicitly included pawnbrokers in the Act, explicitly mentioned pledge and pawn transactions involving firearms, and clearly failed to include them among the statutory exceptions, we are not at liberty to tamper with the obvious reach of the statute in proscribing the conduct in which the petitioner engaged.

III

The legislative history, too, supports this reading of the statute. This is apparent from the aims and purposes of the Act and from the method Congress adopted to achieve those objectives. When Congress enacted the provisions under which petitioner was convicted, it was concerned with the widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest. Pub. L. 90-351, § 1201, 82 Stat. 236, as amended by Pub. L. 90-618, § 301 (a)(1), 82 Stat. 1236, 18 U. S. C. App. § 1201. Congress determined that the ease with which firearms could be obtained contributed significantly to the prevalence of lawlessness and violent crime in the United States. S. Rep. No. 1097, 90th Cong., 2d Sess., 108 (1968). The principal purpose of the federal gun control legislation, therefore, was to curb crime by keeping "firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency." S. Rep. No. 1501, 90th Cong., 2d Sess., 22 (1968).

Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, and the Gun Control Act of 1968, are thus aimed at restricting public access to firearms. Commerce in firearms is channeled through federally licensed importers, manufacturers, and dealers in an attempt to halt mail-order and interstate consumer traffic in these weapons. The principal agent of federal enforcement is the dealer. He is licensed, §§ 922 (a)(1) and 923 (a); he is required to keep records of "sale . . . or other disposition," § 923 (g); and he is subject to a criminal penalty for disposing of a weapon contrary to the provisions of the Act, § 924.

Section 922 (a)(6), the provision under which peti-

tioner was convicted, was enacted as a means of providing adequate and truthful information about firearms transactions. Information drawn from records kept by dealers was a prime guarantee of the Act's effectiveness in keeping "these lethal weapons out of the hands of criminals, drug addicts, mentally disordered persons, juveniles, and other persons whose possession of them is too high a price in danger to us all to allow." 114 Cong. Rec. 13219 (1968) (remarks of Sen. Tydings). Thus, any false statement with respect to the eligibility of a person to obtain a firearm from a licensed dealer was made subject to a criminal penalty.

From this outline of the Act, it is apparent that the focus of the federal scheme is the federally licensed firearms dealer, at least insofar as the Act directly controls access to weapons by users. Firearms are channeled through dealers to eliminate the mail order and the generally widespread commerce in them, and to insure that, in the course of sales or other dispositions by these dealers, weapons could not be obtained by individuals whose possession of them would be contrary to the public interest. Thus, the conclusion we reached above with respect to the language and structure of the Act, that firearms redemptions in pawnshops are covered, is entirely consonant with the achievement of this congressional objective and method of enforcing the Act.

Moreover, as was said in *United States* v. *Bramblett*, 348 U. S. 503, 507 (1955), "There is no indication in either the committee reports or in the congressional debates that the scope of the statute was to be in any way restricted" (footnotes omitted). Indeed, the committee reports indicate that the proscription under § 922 (d) on the sale or other disposition of a firearm to a felon "goes to all types of sales or dispositions—

over-the-counter as well as mail order." [7] S. Rep. No. 1097, 90th Cong., 2d Sess., 115 (1968). See S. Rep. No. 1501, 90th Cong., 2d Sess., 34 (1968). As far as the parties have informed us, and as far as our independent research has revealed, there is no discussion of the actual meaning of "acquisition" or of "sale or other disposition" in the legislative history. Previous legislation relating to the particular term "other disposition" sheds some light, however, and prudence calls on us to look to it in ascertaining the legislative purpose. *United States* v. *Katz*, 271 U. S. 354, 357 (1926). The term apparently had its origin in § 1 (k) of the National Firearms Act, Pub. L. No. 474, 48 Stat. 1236 (1934). That Act set certain conditions on the "transfer" of machine guns and other dangerous weapons. As defined by the Act, "transfer" meant "to sell, assign, pledge, lease, loan, give away, or otherwise dispose of." The term "otherwise dispose of" in that context was aimed at providing

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[7] James V. Bennett, then Director of the Federal Bureau of Prisons, in Senate testimony offered a "case study" vividly illustrating non-sale situations that would qualify as a firearms "disposition" or "acquisition." One of his illustrations was the following:

"On September 26, 1958, a 20-year-old youth shot and seriously wounded a teller during the course of a bank robbery in St. Paul; only a week previously he had bought the revolver, a .357 Smith & Wesson, in a Minneapolis sporting goods store, pawned it the same day, and on the day of the robbery redeemed it with money obtained from check forgeries."

Mr. Bennett concluded his testimony with the observation, "No responsible and thoughtful citizen can, in my opinion, seriously object to measures which would discourage youngsters, the mentally ill, and criminals from coming into possession of handguns." Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 88th Cong., 1st Sess., Pt. 14, pp. 3369, 3377 (1963).

maximum coverage. The interpretation we adopt here accomplishes the same objective.[9]

There also can be no doubt of Congress' intention to deprive the juvenile, the mentally incompetent, the criminal, and the fugitive of the use of firearms. Senator Tydings stated:

> "Title IV, the concealed weapons amendment, is a very limited, stripped-down, bare-minimum gun-traffic control bill, primarily designed to reduce access to handguns for criminals, juveniles, and fugitives . . . . I can fairly say that this concealed weapons amendment does not significantly inconvenience hunters and sportsmen in any way. The people it does frustrate are the juveniles, felons, and fugitives who today can, with total anonymity and impunity, obtain guns by mail or by crossing into neighboring States with lax or no gun laws at all, regardless of the law of their own State." 114 Cong. Rec. 13647 (1968).

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[9] Testimony by then Attorney General Ramsey Clark also supports the rejection of petitioner's suggestion that the language of the statute be given a restrictive meaning:

"Mr. Donohue. Do you not think, Mr. Attorney General, to attain the real objective and purpose of this bill, it should not only deal with the sale, but whoever sells or delivers?

"Mr. Clark. It covers delivery, too.

"Mr. Donohue. Where?

"Mr. Clark. Well, generally, through the bill when you talk about—well, it would be unlawful for any licensed importer to sell or deliver. Any licensed dealer to sell or deliver.

"Mr. Donohue. It is not restricted to just sale for consideration?

"Mr. Clark. No. The delivery, too."

Hearings on an Anti-Crime Program before Subcommittee No. 5 of the House Committee on the Judiciary, 90th Cong., 1st Sess., 269 (1967).

Congressman Celler, the House Manager, stated:

> "Mr. Chairman, none of us who support Federal firearms controls believe that any bill or any system of control can guarantee that society will be safe from firearms misuse. But we are convinced that a strengthened system can significantly contribute to reducing the danger of crime in the United States. No one can dispute the need to prevent drug addicts, mental incompetents, persons with a history of mental disturbances, and persons convicted of certain offenses, from buying, owning, or possessing firearms. This bill seeks to maximize the possibility of keeping firearms out of the hands of such persons." *Id.*, at 21784 (1968).

Congressman McCulloch, a senior member of the House Committee on the Judiciary, in referring specifically to § 922 (a)(6), stated, "[The bill] makes it unlawful . . . [f]or any person, in connection with obtaining a firearm or ammunition from a licensee, to make a false representation material to such acquisition." *Id.*, at 21789 (1968).[9] Given these statements of congressional purpose, it would be unwarranted to except pawnshop

[9] It should be apparent from these statements that Congress was not so much concerned with guaranteeing no interference with the ownership of weapons as it was in distinguishing between law abiding citizens and those whose possession of weapons would be contrary to the public interest. Hunting, target practice, gun collecting, and the legitimate use of guns for individual protection are not proscribed by the Act. Ownership of a weapon, however, may be interfered with by seizure and forfeiture under the Act for any violation of its provisions. Section 924 (d) incorporates the seizure and forfeiture provisions of the Internal Revenue Code when there is any violation of the provisions of the chapter or any rule or regulation thereunder. The Act itself thus contemplates interference with the ownership of weapons when those weapons fall into the hands of juveniles, criminals, drug addicts, and mental incompetents.

redemptions when, by virtue of the statutory language itself, such redemptions would be covered. Otherwise every evil Congress hoped to cure would continue unabated."

"What few references there are to pawnbrokers in the debates indicate that Congress was definitely interested in curbing firearms traffic between pawnbrokers and convicted felons. Senator Tydings, a strong proponent of the bill which became the Act, expressed his concern when he compared the bill to a proposal that was offered as an alternative:

"'[O]ne reading through the amendment for the first time would assume that pawnbrokers are covered by the critically important provisions of the affidavit-waiting period procedure. But, if a pawnbroker only receives secondhand weapons as security for the repayment of a loan and does not deal in new firearms, he is not transporting, shipping, or receiving a firearm in interstate or foreign commerce. Used weapons presumably will have come to rest in the hands of the borrower, and the transaction will be wholly intrastate. Such a pawnbroker would not need a Federal firearms license to conduct over-the-counter transactions in firearms. And, accordingly, he would not be a 'licensed dealer' required to comply with the affidavit-waiting period procedure for his over-the-counter sales in handguns. Now, if this analysis is correct, and I believe it is, this is no small omission. Surely the great bulk of criminally irresponsible purchasers of pistols and revolvers buy their weapons secondhand, and many of them from pawnshops. We all have seen the virtual arsenals displayed in the windows of pawnshop dealers in all of the major cities of the country. To say that we have effectively regulated traffic in firearms when we will not have touched the great bulk of these pawnbroker operations is a complete and utter hypocrisy." 114 Cong. Rec. 13222 (1968).

See also Memorandum placed in the record by Senator Dodd. *Id.*, at 13220. Senator Tydings made this further comparison:

"[I]t is obvious that many persons with criminal records purchase from pawnbrokers, and there are many occasions when the pawnbroker knows the criminal background of the client. Under Amendment No. 708, many of these pawnbrokers will not be required to be licensed. They would not need to comply with the affidavit procedure. And even if they were licensed, there would be no prohibition on their selling firearms to known criminals. Under

IV

Petitioner urges that the intention to include pawn redemptions is so ambiguous and uncertain that the statute should be narrowly construed in his favor. Reliance is placed upon the maxim that an "ambiguity

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title IV, on the other hand, all of these pawnbrokers would be required to be licensed—because all dealers and manufacturers must be licensed whether or not they ship, receive, or transport in commerce—and all of them would be under direct Federal sanction not to sell firearms to known criminals. I ask you, which bill is likely to be more effective?" Id., at 12223.

It must be conceded that these remarks refer to "selling" firearms, but we do not credit this fact as significant for purposes of determining whether a pawnshop redemption is covered by the Act. The plain language of the statute as enacted prohibits a dealer from "selling or disposing of" firearms to felons, and petitioner's counsel at oral argument intimated that a pawnbroker, under this language, could dispose of a firearm other than by sale and be covered by the Act. Tr. of Oral Arg. 4-5. References in the legislative debate, moreover, are replete with shorthand language and this is merely an instance of its use. Had the legislators been engaged in a colloquy on the actual meaning of "sale or other disposition of," we might be more receptive to the interpretation proffered by the petitioner.

We also note that the President of the Pawnbrokers' Association of the City of New York testified during congressional hearings that almost all firearm transactions by pawnshops are by pledge and redemption, and contended, therefore, that pawnbrokers should not be included as dealers under the Act. Hearings on a Federal Firearms Act before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 90th Cong., 1st Sess., 1062–1066 (1967). Thus, informed of the fact that almost all firearms transactions by pawnbrokers were through pledge and redemption, and faced with the argument that pawnbrokers should not be considered as "dealers," Congress clearly chose to retain pawnbrokers as firearms dealers.

Finally, the language of the committee reports indicates that a "sale or disposition" includes "all types of sales or dispositions." S. Rep. No. 1097, 90th Cong., 2d Sess., 115 (1968).

concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis v. United States*, 401 U. S. 808, 812 (1971); *United States v. Bass*, 404 U. S. 336, 347 (1971). This rule of narrow construction is rooted in the concern of the law for individual rights, and in the belief that fair warning should be accorded as to what conduct is criminal and punishable by deprivation of liberty or property. *United States v. Wiltberger*, 5 Wheat. 76, 95 (1820); *United States v. Bass*, 404 U. S., at 348. The rule is also the product of an awareness that legislators and not the courts should define criminal activity. Zeal in forwarding these laudable policies, however, must not be permitted to shadow the understanding that "[s]ound rules of statutory interpretation exist to discover and not to direct the Congressional will." *United States ex rel. Marcus v. Hess*, 317 U. S. 537, 542 (1943). Although penal laws are to be construed strictly, they "ought not to be construed so strictly as to defeat the obvious intention of the legislature." *American Fur Co. v. United States*, 2 Pet. 358, 397 (1829); *United States v. Wiltberger*, *supra*; *United States v. Morris*, 14 Pet. 464, 475 (1840); *United States v. Lacher*, 134 U. S. 624 (1890); *United States v. Bramblett*, 348 U. S., at 510; *United States v. Bass*, 404 U. S., at 351.

We perceive no grievous ambiguity or uncertainty in the language and structure of the Act. The statute in question clearly proscribes petitioner's conduct and accorded him fair warning of the sanctions the law placed on that conduct. Huddleston was not short of notice that his actions were unlawful. The question he answered untruthfully was preceded by a warning in boldface type that "an untruthful answer may subject you to criminal prosecution." The question itself was forthright and direct, stating that it was concerned with conviction of a crime punishable by imprisonment for a

term exceeding one year and that this meant the term which could have been imposed and not the sentence actually given. Finally, petitioner was required to certify by his signature that his answers were true and correct and that he understood that "the making of any false oral or written statement . . . with respect to this transaction is a crime punishable as a felony." This warning also was in boldface type. Clearly, petitioner had adequate notice and warning of the consequences of his action.

Our reading of the statute cannot be viewed as judicial usurpation of the legislative function. The statute's language reveals an unmistakable attempt to include pawnshop transactions, by pledge or pawn, among the transactions covered by the Act. And Congress unquestionably made it unlawful for dealers, including pawnbrokers, "to sell or otherwise dispose of any firearm" to a convicted felon, a juvenile, a drug addict, or a mental defective. § 922 (d). Under these circumstances we will not blindly invoke the rule of lenity to "destroy the spirit and force of the law which the legislature intended to [and did] enact." *American Tobacco Co.* v. *Werckmeister*, 207 U. S. 284, 293 (1907); *United States* v. *Kats*, 271 U. S., at 357."

" The decision today does not ignore the admonition of the Court in *United States* v. *Bass*, 404 U. S. 336, 349 (1971), that "[i]n traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." This statute did affect the federal balance and it did so intentionally. As Senator Tydings explained:

"This concealed weapons amendment does not violate any State's right to make its own gun laws. Quite the contrary, title IV provides the controls on interstate gun traffic which only the Federal Government can apply, and without which no State gun law is worth the paper it is written on. . . . Without such Federal assistance,

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The petitioner suggests, lastly, that the application of § 922 (a)(6) to a pawn redemption would raise constitutional questions of some moment, and that these would not arise if the statute were narrowly construed. We fail to see the presence of issues of that import. There was no taking of Huddleston's property without just compensation. The rifles, in fact, were not his but his wife's. Moreover, Congress has determined that a convicted felon may not lawfully obtain weapons of that kind. Nor were petitioner's false answers in any way coerced. *United States* v. *Knox*, 396 U. S. 77, 79 (1969); *Bryson* v. *United States*, 396 U. S. 64, 72 (1969). Finally, no interstate commerce nexus need be demonstrated. Congress intended, and properly so, that §§ 922 (a)(6) and (d)(1), in contrast to 18 U. S. C. App. § 1202 (a)(1), see *United States* v. *Bass*, *supra*, were to reach transactions that are wholly intrastate, as the Court of Appeals correctly reasoned, "on the theory that such transactions affect interstate commerce." 472 F. 2d, at 593. See also *United States* v. *Menna*, 451 F. 2d 982, 984 (CA9 1971), cert. denied, 405 U. S. 963 (1972), and *United States* v. *O'Neill*, 467 F. 2d 1372, 1373–1374 (CA2 1972).

We affirm the judgment of the Court of Appeals.

It is so ordered.

MR. JUSTICE DOUGLAS, dissenting.

This case presents a minor version of the problem confronting the Court in *Rosenberg* v. *United States*, 346 U. S. 273. That case involved an ambiguity in a criminal law, an ambiguity that normally would be resolved

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any State gun law can be subverted by any child, fugitive, or felon who orders a gun by mail or buys one in a neighboring State which has lax gun laws." 114 Cong. Rec. 13647 (1968).

in favor of life. A split Court in a tense period of American history unhappily resolved the ambiguity against life—a break with history which the conscience of our people will sometime rectify.

The present case is a minor species of the same genus. A person who took his gun to a pawnshop for a loan undoubtedly had "acquired" the gun prior to that time. It is therefore odd to think of the "acquisition" occurring when he redeemed his own gun from the pawnshop. I agree with the Court of Appeals for the Fifth Circuit, *United States* v. *Laisure*, 460 F. 2d 709, that the ambiguity should be resolved in favor of the accused. That is what we have quite consistently done, except in *Rosenberg*, in the past. See *United States* v. *Bass*, 404 U. S. 336, 347–348, and cases cited.*

*Civil cases cited by the Court, *e. g. American Tobacco Co.* v. *Werckmeister*, 207 U. S. 284, 293, are wide of the mark. For application of a law that sends people to prison for years where Congress has not made it clear they should be there, *United States* v. *Bass*, *supra*, at 346, is only another device as lacking in due process as Caligula's practice of printing the laws in small print and placing them so high on a wall that the ordinary man did not receive fair warning.

"When taxes of this kind had been proclaimed, but not published in writing, inasmuch as many offenses were committed through ignorance of the letter of the law, he at last, on the urgent demand of the people, had the law posted up, but in a very narrow place and in excessively small letters, to prevent the making of a copy." Suetonius, The Lives of the Twelve Caesars 192 (Modern Lib. ed. 1931).